SUPREME COURT OF THE UNITED STATES.

No. 61.

THE BANK UNITED STATES, APPELLANTS,

VERSUS

JAMES DANIEL ET AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF KENTUCKY.

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Pleas before the honorable John McLean, one of the Judges of the Seventh Circuit Court of the United States of America, in and for the Kentucky District, holden at the Capitol in the city of Frankfort, at the November term of said Court, in the year 1836.

DANIEL ET AL.
vs.
BANK U. S.

Be it remembered, to wit, on the 29th day of October, in the year 1827, came James Daniel, &c. by their attorney into the clerk's office of the court aforesaid, and filed the following bill in chancery against the President, Directors and Co. of the Bank of the United States, to wit:

To the Judges of the circuit court of the United States for the district of Kentucky, humbly complaining shew unto your honors, your orators James Daniel, Henry Daniel, Isaac Cunningham and Samuel Hanson, that on 12th day of October, 1818, Robert Griffing (who has since died) drew his bill of exchange of that date on your orator James Daniel for ten thousand dollars, payable one hundred and twenty days after date, at the office of discount and deposite of the Bank of the United States in New Orleans, which bill reads in the words and figures following, to wit:

"Exchange for $10,000. LEXINGTON, Oct. 2d, 1818.

One hundred and twenty days after date, &c. &c., as by reference to one of the settlements of said bill of exchange herewith exhibited marked A, and prayed to be taken as a part of this bill, will more at large appear, that your orator James Daniel duly accepted said bill in writing, and the same was regularly endorsed by your orators Henry Daniel, Isaac Cunningham and Samuel Hanson, to the President, Directors and Company of the Bank of the United States. Your orators state that when said bill of exchange was drawn by said Griffing, both he and your orator James Daniel lived and were then in the State of Kentucky, and that at the time your orator James Daniel accepted said bill he lived and was in this State, and they state that all the parties to said bill, to wit, the drawer, accepter, and endorsers on said bill, were on the 12th day of October, 1818, and ever since have continued to be residents of the State of Kentucky.

The state that the said bill was transmitted to New Orleans by said bank for payment, but not being duly paid, it was regularly protested and returned, and said bank looked to your orators and said Griffing for the principal of said bill, and interest thereon from 9th February, 1819, the time it fell due, together with the charges of protest, and ten per centum damages on the whole amount of said , which claim the decedent and your orator James Daniel believing to be legal, they paid said bank in June or July, 1819, the sum of $3330 67 on account of the whole amount due on said bill, consisting of principal, interest, charges and damages aforesaid, and for the balance of said amount said Griffing and James Daniel executed their negotiable note for $8000, payable sixty days after date, with your orators Cunningham, Hanson, and Henry Daniel thereon, either as endorsers or co-drawers, and payable to one William Armstrong, and which note was discounted by said bank for the benefit of said Griffing and James Daniel, and upon the express agreement between them and said bank, and the other parties to said note, that the proceeds of said $8000 should be applied to the payment of the balance due on said bill of exchange. They state that said $8000 note bore date in June or July, 1819, and was drawn

at the time said $3330 67 were paid as aforesaid, and they state that your orators Cunningham, Hanson, and Henry Daniel, had no interest in the proceeds of said bill of exchange on $8000, they being bound in both as the friends of said Griffing and Daniel, and merely as their securities. They state that they have forth the date and amount of said payment of $3330 67 from memory and information, and not from their personal knowledge, as said Griffing transacted the business, and has left no written memorandum of those facts. They state that said Griffing and James Daniel owed said bank only on account of said bill, and they charge that said payment was made, and $8000 note executed in consideration and on account of said protested bill, and for no other consideration whatever.

They are advised that the bank are not entitled to ten per centum damages on said protested bill of exchange, inasmuch as the drawer and accepter thereof both lived in Kentucky at the date and maturity of said bill, and that therefore so much of said $8000 note as exceeds the balance due on said bill for principal, interest and damages, (after deducting said payment of $3330 67,) was included in said note by mistake, as to the legal liability of said Griffing and James Daniel for said ten per cent. damages, and as to said excess said note was executed without any consideration whatever.

Your orators state that in August, 1820, or thereabouts, said Griffing and your orators executed their joint promissory note to said bank for the sum of $7,500 for the balance due on said $8000 note, (after deducting $500 paid thereon by said Griffing and James Daniel, or one of them,) and payable sixty days after date, and they charge that when they executed said $7,500 note, they as well as the said Griffing still labored under the mistaken belief that said bank had a legal claim to said ten per cent. damages. Your orators state that said bank has recovered a judgment against your orators on said $7,500 note, on the common side of this court, and to the said judgment and the proceedings in the suit wherein it was rendered your orators refer, and pray that they may be taken as a part of this bill.

They state that your orators Cunningham and Hanson obtained from the county court of Clarke county (where said Griffing died) letters of administration on the personal estate of said Griffing, as will appear by an authenticated copy of said letters if controverted.

They are advised that inasmuch as there has been only a partial failure of the consideration of said $7,500 note, then relief against the excess in said note (and consequently in said judgment) can be had in a court of equity only, and they therefore pray that said President, Directors and Company of the Bank of the United States may be made defendants so this bill, and be compelled to answer thereto agreeably to the rules of this court; that said defendants may be restrained by an injunction from collecting $1515 part of said judgment until the further order of your honors herein; that at the final hearing said injunction may be made perpetual, and your orators may have such other and further relief in the premises as to equity may seem meet, they pray, &c. &c., a subpœna, with injunction, &c.

SAMUEL HANSON,
ISAAC CUNNINGHAM,
HENRY DANIEL,
JAMES DANIEL.

A.

Exchange for $10,000. LEXINGTON, Oct. 12th, 1818.

One hundred and twenty days after date of this my first of exchange, second and third of same tenor and date unpaid, pay Henry Daniel, or order, ten thousand dollars at the office of discount and deposite of the Bank of the United States in New Orleans, for value received of him, which charge to account of yours, &c.

ROBT. GRIFFING.

To Mr. JAMES DANIEL.

CLARKE COUNTY, *sct.*

This day Samuel Hanson made oath before me, a justice of the peace for said county, that the statements contained in the within bill are true to the best of his knowledge and belief. Given under my hand, this 1st day of September, 1827.

WILLIAM F. HOCKADAY.

Subpœna in Chancery Court.

The United States of America to the Marshal of the Kentucky District, greeting:

You are hereby commanded to summon the President, Directors and Company of the Bank of the United States to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the capitol in Frankfort, on the first Monday of our May term next, to answer a bill in chancery exhibited against them by James Daniel, Henry Daniel, Isaac Cunningham and Samuel Hanson, and they shall in nowise omit, under the penalty of four hundred dollars; and have then there this writ.

In testimony whereof, John Marshall, Esq. Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 2d day of January, 1828, and of our independence the 52d.

Attest—

[SEAL.] JNO. H. HANNA, C. C. C. K. D.

Marshal's return.

Executed on James Harper, cashier of the branch of the Bank of the United States at Lexington, 5th February, 1828.

CHAPMAN COLEMAN, M. K. D.

And afterwards, to wit, at the November term of the court aforesaid, and year 1827, "Came the complainants aforesaid by their counsel, and the counsel for the complainants waiving notice, the said complainants moved the court to grant them an injunction herein, agreeably to the prayer of their bill, which motion the court took under consideration.

And on the next day, the court being advised concerning the motion of the complainants herein, do order that an injunction be granted the said complainants agreeably to the prayer of their bill, restraining and enjoining the defendants from further proceedings on $1515, part of their judgmen against the complainants herein, until the matter can be heard in equity;

upon condition that the complainants enter into bond, conditioned agreeably to law, in the penalty of $2000, with Thomas Triplett security, who is approved of and accepted as security herein by the counsel of the defendants.

Alias Subpœna in Chancery.

The United States of America to the Marshal of the Kentucky District, greeting:

You are hereby again commanded to summon the President, Directors and Company of the Bank of the United States to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them by James Daniel, Henry Daniel, Isaac Cunningham and Samuel Hanson, and this they shall in no wise omit; and have then there this writ.

In testimony, John Marshall, Esq., Chief Justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 23d day of January, A. D. 1828, and of our independence the fifty-second.

Attest—

[SEAL.] JNO. H. HANNA, C. C. C. K. D.

Marshal's return, to wit:

Executed on James Harper, cashier of the branch of the Bank of the United States at Lexington, 5th February, 1818.

CHAPMAN COLEMAN, M. K. D.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1836 (until which time this cause was continued on the rules) came the defendants by their counsel, and gave notice that they would on the third day move the court on the face of the bill for a dissolution of so much of the injunction granted in this cause as places the amount enjoined a credit on the judgment at the time the debt became due, instead of a credit at the time the injunction was granted.

And on the next day "came on to be heard the defendants' motion to dissolve the injunction in part, or correct the endorsement on execution, and amend marshal's return, and the court being advised and order and direct that the credit on the execution at common law vs. complainants be so amended as to give credit thereon for $1525 on the day the bill was filed, instead of $1515 as of the day the note given by complainants became due, and that the marshal's return be so amended as to give credit for the amount paid only; and on further motion of defendants, leave is given them to file their answer, which is done according . And for replication to the said answer, the complainants say that the allegations in their bill are true, and that so far as the said answer contradicts their said bill it is untrue, and by consent this cause is set down for hearing at next term.

The following is the answer of the defendants filed herein:

The answer of President, Directors and Company of the Bank of the United States to a bill in chancery, exhibited against them in the seventh circuit court of the United States for the district of Kentucky, by James Daniel, Henry Daniel, Samuel Hanson and Isaac Cunningham. These respondents say, that true it is the complainants did draw, accept and endorse

to respondents the bill of exchange for $10,000, in their bill of complaint mentioned, and in the manner therein stated; it is also true that all said complainants at the time of said drawing, accepting and endorsing, were citizens and residents of the State of Kentucky; it is also true said bill of exchange was protested for non payment, and upon being returned so protested, the sum of $1000, being ten per cent. on the amount of said bill, was claimed by these respondents as their damages, as this claim was assented to by complainants with a full knowledge of the facts upon which it was founded, and of all the principles of law upon which it was asserted; and in pursuance of this assent the amount of said bill with interest, and the one thousand dollars damages, was liquidated and discharged by complainants in the manner alledged in their bill. Respondents cannot admit this was done under any mistake either as to fact or law; indeed two of complainants were lawyers of celebrity, of deservedly high rank; and respondents cannot impute to them ignorance of the and ignorance of the facts is not pretended.

Your respondents would alledge that by a statute of Kentucky, bills of exchange drawn by a person in this State on another out of the State, when returned protested, bore ten per cent. damages besides interest; independently of said statute, such bill bore damages for re-exchange and expenses, and the effect of this statute was to reduce to uniformity and certainty the amount to which the holders were entitled, in consequence of the money not being paid at the place agreed upon, and of the loss arising from difference of exchange, and expense of attention to bills to be paid at a distance. Your respondents consider their claim as coming within the provisions of this statute, and if not coming within it they are entitled to equal damages with those given by the statute, as their loss arising from the protest was the same, and whether equal or not, the respondents resist the effort of complainants to set aside the fair and voluntary assessment of these damages by the parties themselves.

Respondents say that all the grounds of equity of alledged in said bill accrued to complainants more than five years next before the commencement of this suit, and are barred by lapse of time; and they further alledge that the damages were liquidated, assented to, and discharged, more than five years *years* next before the commencement of this suit, and all claim to relief on account of the same is barred by the statute of limitations.

All the allegations in complainants' bill not responded to are admitted to be true; having fully answered, the respondents pray the dissolution of the injunction herein, &c.

WICKLIFFE & JOHNSON.

And afterwards, to wit, at the November term of the court and year aforesaid, (November term, 1836.)

This day this cause came on to be heard upon the bill, answer and exhibits, but the court not being advised, took time, &c.

And afterwards, to wit, on a subsequent day of the term and year last aforesaid:

The court being now sufficiently advised on the subject do order, adjudge and decree, that a credit be entered on the judgment at law obtained by the defendants against the plaintiffs as set forth in the bill for $1000, the amount of damages charged on the protested bill, with all interest charged on said sum up to the time of the judgment, and that the defendants be perpetually enjoined from taking out execution on said judgment for the sum thus decreed

to be credited; but this decree is not to affect the balance of the judgment. It is further decreed and ordered that the defendants pay to complainants their costs herein expended.

The following agreement was entered into between the parties before the trial, to wit:

"It is agreed that the statements contained in said bill as to liquidation of the bill of exchange of $10,000 are true. It is also agreed that this liquidation was on the 8th day of July, 1819, and that no interest was charged up to that time except upon $10,000. It is also admitted that such renewals of the $8000 note were made as are stated in said and that the judgment at law was on one of the notes given in renewal.

UNITED STATES OF AMERICA,
Seventh Circuit Kentucky District, sct.

I, John H. Hanna, clerk of the seventh circuit court of the United States of America in and for the Kentucky district, do hereby certify that the foregoing pages (eleven in number) contain a full, true and complete transcript of the record and proceedings had in the suit therein mentioned.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 19th day of December, A. D. 1836, and in the 61st year of the independence of the United States.

[L. S.] JOHN H. HANNA.

Citation.

JAMES DANIEL ET AL.
vs.
PRESIDENT, DIRECTORS & Co. BANK UNITED STATES.

To James Daniel, Henry Daniel, Isaac Cunningham and Samuel Hanson, citizens of the State of Kentucky, greeting:

Whereas an appeal has been prayed for and is hereby granted by Thomas B. Monroe, Esq. Judge of the United States in and for the Kentucky district, from a decree of the seventh circuit court of the United States, in and for the Kentucky district, on the 18th day of November, 1836, wherein the said James Daniel, Henry Daniel, Isaac Cunningham and Samuel Hanson were complainants, and the President, Directors and Company of the Bank of the United States were defendants, to the Supreme Court of the United States, at the city of Washington, the present seat of the National Government, on the first Monday in January next.

These therefore are to cite and command you that you be and appear in the said Supreme Court at Washington, on the day aforesaid, to be heard if any thing you have to say upon the said appeal.

Witness my hand as Judge of the United States in and for the District of Kentucky, this 24th day of November, A. D. 1836, and in the sixty-first year of the independence of the United States.

THOS. B. MONROE, J. U. S. D. K.

Executed, December 14th, 1836.

JNO. M. McCALLA, M. K. D.

Service four defendants—8 00.

SUPREME COURT OF THE UNITED STATES.

No. 62.

JOHN H. CLARKE, ADM'R OF WILLARD W. WETMORE, APPELLANT,

VERSUS

HENRY MATHEWSON, ET AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE RHODE ISLAND DISTRICT.

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Bill in Equity.

WILLARD W. WETMORE
vs.
HENRY MATHEWSON et al. } In Equity.

To the honorable Circuit Court of the United States, to be holden at Newport within and for the Rhode Island district on the fifteenth day of June, in the year of our Lord one thousand eight hundred and thirty.

Willard W. Wetmore of the city of New Haven, in the Connecticut district, merchant, a citizen of the State of Connecticut, humbly complaining, sheweth to this honorable court, that at Providence in the Rhode Island district, on the twelfth day of October, A. D. 1820, Cyrus Butler, merchant, and Edward Carrington and Samuel Wetmore, merchants, transacting business in company under the name and style of Edward Carrington & Company of the one part, and Henry Mathewson, master mariner, of the other part, all of Providence in the Rhode Island district, citizens of the State of Rhode Island and Providence Plantations, made, executed and interchangeably delivered a certain agreement and stipulations in writing, a true copy whereof is hereunto annexed, marked A, and which your orator prays may be taken as a part of this bill of complaint, bearing date the said twelfth day of October, in the year last aforesaid.

And your orator would further shew, that on or about the thirteenth day of November, A. D. 1820, the said Butler and Edward Carrington & Company, in pursuance with the provisions of said agreement, provided for the expedition in said agreement mentioned, the ship Mercury, and afterwards, or about the twenty-second day of December, A. D. 1820, at the Texel in Europe, the said Mathewson received the said ship and her cargo, as captain and supercargo thereof, and took command of the said ship, and therewith received the particular instructions of the said Butler and Edward Carrington & Company in writing, bearing date the thirteenth and fourteenth days of November, A. D. 1820, relative to and for the performance and fulfilment of the said agreement on the part of the said Mathewson, a copy whereof is hereunto annexed, marked B, and which your orator prays may be taken as a part of this bill of complaint; and sailed from the port of Bremen with said ship and the cargo taken on board on or about the thirteenth day of March, A. D. 1821, on the voyage in said agreement mentioned, according to the said instructions given him by said Butler and Edward Carrington & Company, and proceeded therewith to the port of Valparaiso in Chili, and to other ports and places in Chili and Peru in South America and other countries, and sold and disposed of the cargo on board said ship, and received in payment therefor in specie or merchandise and the products of those countries, which the said Henry Mathewson either took on board said ship Mercury or resold the same for specie, and proceeded therewith to the port of Gibraltar in Europe, where he arrived with said ship and cargo and specie on or about the ninth day of November, A. D. 1822, and sold and disposed of the cargo of said ship, and completed the voyage that he had stipulated to perform in said ship.

And your orator would further shew, that at said Gibraltar, on or about the twenty-third day of November, A. D. 1822, the said Henry Mathewson commenced a new voyage or adventure in said ship, and according to the terms of said agreement became and was an owner and copartner in said ship and cargo and specie put on board for said new voyage or adventure,

of one-tenth part thereof on and pursuant to the terms and stipulations in said agreement mentioned.

And your orator would further shew, that the said Butler and Edward Carrington & Company did then and there furnish the said ship with specie and a cargo for the new adventure, according to the terms of said agreement, of the value of one hundred and fifty thousand dollars, and the said Mathewson sailed from said port of Gibraltar on said new voyage or adventure in said ship, as master and supercargo, with said specie and cargo on board on or about the twenty-eighth day of December, A. D. 1822, and proceeded to the ports of Rio Janeiro, Valparaiso, Coquimbo, Arica, Truxillo, Payta, Lima, Canton, California, Mizatlan, San Blas, Guyaquill, and to divers other ports, places and countries, backwards and forwards, for *trade*, *freight*, and the employment of said ship, as the said Henry thought proper, until on or about the tenth day of June, A. D. 1825, where at the port of Guyaquill in South America the said ship Mercury was condemned as unseaworthy, and ordered to be sold for the benefit of whom it might concern; and thereupon in said month of June the said ship was sold, together with her tackle, apparel, armaments, furniture and stores.

And your orator would further shew, that afterwards, on or about the first day of June, 1821, he entered into copartnership with the said Edward Carrington & Company, and thereupon became and was interested in the said ship Mercury and cargo, and in all the concerns of said adventure, according to the terms of said agreement at and from Gibraltar as aforesaid, in the proportion of one-fourth of nine-twentieth parts thereof, and then and there became and was a partner therein with the said Mathewson and the other defendants, and so continued to be until the said adventure ended, and until the dissolution of said copartnership.

And your orator would further shew, that afterwards, on or about the first day of December, A. D. 1825, at the port of Choullos, or some other place in South America, the said Henry Mathewson chartered, on account and for the concern of said ship Mercury, three-fourth parts of the ship Superior, Capt. Andrews, for a term of time to your orator unknown, and shipped on board of her a part, or the whole of the proceeds of the sales of the ship Mercury and cargo, her tackle, apparel, armament, furniture and stores for and on account of the owners of said ship Mercury, copartners as aforesaid, and on the terms and conditions of their aforesaid agreement, and proceeded therewith to the ports of Payta, Manilla, Lintin, Whampoa, Canton, Valparaiso, Lima backwards and forward, and to other ports, countries and places for trade, freight and other employment, until on or about the eighth day of November, A. D. 1826, at the port of Lima, where said charter party expired, and the voyages were wholly ended and the copartnership aforesaid terminated and was dissolved.

And your orator would further shew, that the said Henry Mathewson, combining and confederating together with the said Butler, Edward Carrington and Samuel Wetmore, and to and with divers other persons at present unknown to your orator, whose names, when discovered, your orator prays may be herein inserted and they made parties defendants hereto, with proper and apt words to charge them, and continuing to injure and oppress your orator, sometimes pretending that the said Henry Mathewson has rendered a true and perfect account of said voyages and adventures, and of the proceeds and profits thereof, and of all the cargoes, freights and passengers taken on board said ship Mercury and ship Superior, and all other

ships and vessels on account of the owners, freighters and employers thereof, and produced all letters, papers, books and writings in his possession relating thereto, and at other times refusing to give a just and true account of certain profits which were earned by said ship Mercury made on her cargoes, and by said ship Superior, and on the property shipped on board of them, and refusing to produce certain letters, books, writings and accounts relating to the same, and of the copartnership property under his management and disposition, alleging the same to be on his own private account; whereas your orator charges the contrary thereof to be the truth. And that the said Henry Mathewson has not produced and shewn to the plaintiff all the letters, papers and other correspondence, nor all the writings, invoices, books and accounts relating to the aforesaid matters and transactions; and in particular your orator charges that the said Henry Mathewson carried goods, wares, merchandise and specie and passengers, with their servants and baggage and property, on board of said ships Mercury and Superior, and received therefor large sums of money, goods, wares and merchandise, and the original books, papers, receipts, letters, instructions, invoices and accounts relating to said matters and transactions, but hath kept back, secreted or withheld the same, although they were material to show your orator's right and just share in the earnings of said ships and the profits made on the cargoes thereof, or on the merchandise or cargoes carried in said ships on part profits or otherwise. And your orator expressly charges, that the said Henry hath never given and rendered any just, true, perfect and particular account of the goods, wares and merchandise or other property which he took on board said ship Mercury at Bremen, or at any other port or place in Europe or elsewhere, in the years 1820 and 1821, and the true cost thereof, nor for what sum or sums of money or other goods, wares and merchandise or other property, the same were sold or exchanged in South America or at any port or ports, place or places in South America or on the west coast of America—nor hath the said Henry ever rendered any just, true, perfect and particular account of the goods, wares, merchandise and specie or other property which the said Henry carried in said ship to Gibraltar in the year 1822, nor of the freight and passengers carried in said ship to Gibraltar at the same time, and what sum or sums of money the same produced at said Gibraltar; and the said Henry hath never rendered and exhibited a just, true, perfect and particular account of the cargo and of the ship stores and the value thereof, and of the specie taken on board said ship Mercury at Gibraltar after the said Henry became a copartner and interested in said ship and cargo according to the terms of said agreement. And your orator further charges and alleges that during the period the said Henry Mathewson commanded the said ship Mercury as master and supercargo, and during the time he chartered the ship Superior, and at other times, he received divers large sums of money in specie and divers goods, wares, and merchandise, and divers bills of exchange and other property belonging to the owners of the ship Mercury and cargo, copartners as aforesaid, of which the said Henry hath never given any just, true and perfect account, all of which was of the value of one hundred and fifty thousand dollars, and all which the said Henry remitted in specie, bills of exchange, goods, wares and merchandise, or in some other property, to some port or place in Europe or the United States, or *or* otherwise brought the same with him to the United States, and applied the same to his own use. And your orator further charges and alleges, that during the period before named and during

said copartnership, the said Henry received on board of said ships Mercury and Superior at the different ports in which they entered or some of them, divers passengers, their servants, baggage and large sums of specie, together with their goods, wares and merchandise, and carried them with their property from port to port and place to place, for which he received large sums of money or other property, and of which he has never rendered any account to his co-defendants or your orator. And your orator further charges and alleges, that during said period before named the said Henry received on board said ships Mercury and Superior large sums in specie and goods, wares and merchandise, or other property, which did not belong to the owners of the ship Mercury, and carried the same from port to port and place to place, and traded and trafficked with the same, and received therefor large sums of money, or goods, wares and merchandise for freight and commissions on the same or for his share of the profits thereof, or for and on some other terms, conditions, agreements or stipulations, and of which he has never rendered or exhibited any account to your orator or to his co-defendants, but refuses so to do.

And your orator further charges and alleges, that the said Henry Mathewson, during the period aforesaid, took and applied to his own use the funds and property of the owners of the ship Mercury and the proceeds of the sale of said ship, her tackle, apparel, armaments, furniture and stores, and traded and speculated thereon in his own name and to his own use and gain, and made large sums of money thereon without rendering any account to your orator or his co-defendants of the same, and that the said Henry Mathewson, during the same period, and during the continuance of said copartnership, and while acting in the employ of your orator and the other def'ds as aforesaid pursuant to said agreement, traded and trafficked in various ports and places, and to large amounts, and thereby made large profits and received large sums of money; all which profits and money ought and do of right enure to the benefit of said copartnership, and of all which the said Henry Mathewson refuses to exhibit and render his just and true account to your orator or his other copartners.

And your orator further alleges and charges, that the said Henry hath always hitherto refused to come to a just, true and perfect account with your orator in the premises, and produce all the letters, copies of letters, original papers, writings, accounts, invoices and books relating to the aforesaid matters and transactions, and the charter party of said ship Superior, and generally of all the proceeds of all the cargoes and funds of said ship Mercury, and of the other copartnership property and funds under his management and disposition. All which actings, doings and pretences are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises. In tender consideration whereof, and for as much as your orator is remediless in the premises, at and by the direct and strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and the like nature are properly cognizable and relievable:

To the end therefore, that the said Henry Mathewson, and the said Butler, Carrington, Samuel Wetmore, and the rest of their confederates, when discovered, may, upon their several and respective corporal oaths, full, true, direct, and perfect answers make to all and singular the matters herein before stated and charged as fully and particularly as if the same were hereinafter repeated, and they thereto distinctly interrogated, and that not only

as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay and belief; and more especially, that the said Henry Mathewson may answer and set forth and render and produce all original books, accounts, papers, writings, letters of all goods, wares, merchandise, specie, and other property, or which relates thereto, taken on board said ship Mercury, on account of the owners thereof, or any other person or persons, and the names of such person or persons, during the time he commanded said ship at the ports of Gibraltar, Rio Janeiro, Valparaiso, Coquimbo, Arica, Truxillo, Payto, Canton, California, Mizatlan, San Blas, Lima, Guyaquill, and at all other ports, countries and places, with the invoices of the true cost of the same, and also produce a true and perfect account of the sales and delivery from said ship Mercury, of all goods, wares and merchandise and specie, or other property, with their prices and net proceeds and amount, and a just and true account of the way and manner said specie and the proceeds of such goods, wares and merchandise and other property were disposed of, and what has become of the same. And also, that he render and exhibit an account of all the goods, wares, merchandise and specie, and other property, taken and received on board said ship Mercury, on account of any other person or persons, other than the owners of said ship, at the port of Gibraltar, or at any other port or place in Europe, South America, China, West Coast of America, or at any other port or ports, or places, whether on freight or in any other manner, or as an adventure, or freight, or part profits, or any other conditions, and on what conditions, and the name or names of the person or persons interested in such goods, wares, merchandise and specie, or other property, and their several proportions, and where they then resided and belonged, and where they now reside and belong. And also to render and exhibit an account of passengers carried in said ship from Gibraltar to any port or ports or places, and to what ports or places, and those taken on board at any other port or ports, and those taken on board at any other port or ports and carried to any other ports or places, and the name or names of all such passengers, their then place or places of residence, and their present place or places of residence and domicil, and the amount of money or other property received for the passage of each of such passengers, their servants and baggage; and the whole amount thereof. And also, that the said Henry Mathewson may render and exhibit an account of all other property or money received on board of said ship, for account of any person or persons, and to whom said money or other property has been delivered, with the receipt for the same, together with the amount of money or other property received by the said Henry Mathewson for freight, deposit, or safe-keeping of said money or other property on board of said ship. And also, that he may produce and render a true and perfect account of all moneys and adventures of goods, wares and merchandise taken on board said ship during the aforesaid voyage or voyages, owned or belonging to any of the officers or crew of said ship, and to what one or ones, and how the same were disposed of by them or by other persons for their account, and what sum or sums of money were by them remitted to the United States or Europe, either in specie, bills of exchange or otherwise. Also, that the said Henry Mathewson produce and render a just, true and perfect account of all purchases and sales of goods, wares and merchandise, or other property, other than the proper cargoes of said ships, or either of them, made by him during his said voyages in said ships Mercury or Superior, at the ports aforesaid, or at any other port or

ports, or place or places during that period, the amount of the same with the value thereof and the purchase or purchases thereof, together with the names of the person or persons interested or concerned in the same, and their several proportions and the amount of sales, and the proceeds and profits of the same, and in what manner said proceeds and profits were disposed of. Also that he state and exhibit a just, true and perfect account of all moneys, bills of exchange, and other property remitted by him during the period he was absent from the United States in the said ships Mercury and Superior, to the United States, Europe, or elsewhere; or brought by himself to the United States, and for whose account and benefit the same were remitted and brought to the United States; and also, that he state and exhibit a just, true, particular and perfect account of an adventure on board said ship, in the name of Cyrus Butler Manchester, and from what said adventure was obtained, of what it consisted, the original amount of the same in value and quantity, and the amount of the sales thereof, and the net proceeds of all the sales thereof, and to whom the same were paid or remitted. Also, to state and exhibit a true and perfect account of all moneys by the said Henry Mathewson paid to, or remitted by the said Cyrus B. Manchester, to the United States, for whose account said payment or remittance were made. And also, to render and exhibit a just, true and perfect account of the sales of said ship Mercury, at the port of Guyaquill, or elsewhere, together with her tackle, apparel, furniture, armament and stores, and of the proceeds thereof. And also, that he render a just, true and perfect account of all moneys, goods, wares and merchandise, or other property shipped or deposited on board of any ship or vessel of war, for safe-keeping or otherwise, the name of such ship or vessel, and that of her commander, and the amount, and to whom the same belonged.

And also, that the said Henry Mathewson may further answer, and set forth, and produce and exhibit the original charter party of the ship Superior, Captain Andrews commander, together with all original books, invoices, papers, letters, accounts and writings which in any manner relate to any goods, wares, merchandise, specie and other property shipped on board the said ship Superior at the port of Lima, or any other port or place, and the name of such port or place, for, or on account of the owners of the ship Mercury or any other person or persons whatever, and the cost of the same. And also that he set forth, exhibit and render a just, true and perfect account of all other property, and specie of every description at the said port of Lima, or any other port or ports, place or places by him shipped on board said ship Superior, to whom the same belonged, and in what proportion, and a particular description of all said property, and an account of the sale thereof, and also a just, true, perfect and particular account of all goods, wares, merchandise and specie, or other property shipped by him, the said Henry, or by his order on board said ship Superior, or by him delivered, or by his order from said ship at the port of Lima, Payta, Manilla, Lintin, Whampoo, Canton, Valparaiso, or at any other port or ports, place or places, the particular cost of the same, to whom the same belonged, and the separate and joint interests of any and all persons therein, and the particular conditions on which such goods, wares, merchandise and specie, or other goods were shipped and carried in said ship, together with the conditions and the particular distribution of all the proceeds of such goods, wares, merchandise and specie, or other property, the particular amount thereof, what were the conditions, and to whom was such distribution made. Also, that he render and exhibit a

just, true, perfect and particular account of all goods, wares, merchandise and specie, or other property ever on board said ship, which belonged, or was in the name of Cyrus B. Manchester, or any other person for his use, from whence it originated, of what it consisted, and what amount in money, bills of exchange, or other property was paid him. And also, that he render and exhibit a just, true, perfect and particular account of all property, whether merchandise or specie, shipped by him, the said Henry Mathewson, on board the ship Portia, or any other vessel, at any port or ports, place or places in Chili or Peru, or elsewhere, to whom the same belonged, from whence the same originated or proceeded, and how the same was disposed of on its arrival in the United States, or in any other port or place. And also, to render and exhibit a just, true and perfect account of all moneys shipped or remitted by him, the said Henry, to Europe, the United States, or elsewhere, during said voyages, and his absence from the United States, or deposited in any place for his use or under his control, and to whom the same belonged, and also of all moneys, bills of exchange, or other property, remitted or shipped to Europe, or the United States, by him or by his order, or brought by him to the United States, on whom the said bills were drawn, who were the drawers, endorsers and payers of said bills, and what were the particular and separate amount of each of such bills of exchange, sums of money or other property.

And that the said Henry Mathewson and other defendants may answer the premises, and come to a full, fair and perfect account with your orator, and that whatever sums of money may be found due to your orator from the said defendants or either of them on such account, may be ordered to be paid to your orator, or grant him such other and further relief in the premises as to this honorable court may seem just and proper, agreeable to the rules and principles of equity.

Wherefore, may it please this honorable court to grant unto your orator a writ of *subpœna*, to be directed to the said Henry Mathewson, Cyrus Butler, Edward Carrington and Samuel Wetmore, thereby commanding them at a certain day, and under a certain pain therein to be inserted, personally to be and appear before this honorable court, or at the office of the clerk thereof, on some rule day of said court, then and there to answer the premises and to stand to, and abide such order and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your petitioner shall ever pray,

WILLARD W. WETMORE,
by his Solicitor, Nath'l Searle.
NATH'L SEARLE,
Counsel for the Orator.

A.

Schedule A, referred to in the preceding Bill.

This agreement witnesseth, That whereas Messrs. Lynch, Hill & Co., of the Republic of Chili, have contracted and agreed with his Excellency, General San Martin, Commander in Chief of said Republic, to furnish to him or said Government a quantity of military stores, which contract has been assigned to Cyrus Butler, and Edward Carrington & Co., who have undertaken to furnish the same. Wherefore, the said Cyrus Butler, and Edward Carrington & Co., on the one part, and Capt. Henry Mathewson on

the other part, all of Providence, in the State of Rhode Island, on the twelfth day of October, A. D. 1820, make and enter into the following agreement and stipulations, viz :

1st. The said Henry Mathewson agrees to take the command of the ship or vessel, the said Butler & Carrington & Co. shall provide for said expedition, and at all times to act as captain and supercargo thereof.

2d. The said Mathewson is to proceed to Europe, attend to the purchase of said military stores, proceed therewith in said ship to Chili and Peru, deliver the same, receive the payment therefor, and do all and every thing that may be necessary and advisable for the faithful accomplishment of said contract, both as regards the delivery of the military stores, and the receiving the payment therefor, whether the said payment shall be in cash or in produce of the Republics, and with the said payments proceed to such ports in China, Europe, or the United States, as may be considered most advantageous, and according to the instructions and recommendations of said Butler and Carrington & Co.: Providing further, that should any circumstance have occurred, or should occur to prevent the contract being complied with on the part of the Chilian or Peruvian Government, or by Gen'l San Martin or his successor, then the said Mathewson is to use his best abilities and exertions to dispose of said military stores in the most advantageous manner and to best profit, and the proceeds of such sale embark on board said ship and proceed therewith to such ports in China, Europe, or the United States, as may be considered most advantageous, and according to the recommendations and instructions of said Carrington & Co., and C. Butler.

3d. The said Butler, and Carrington & Co. on their part, promise to allow and pay the said Mathewson fifty dollars per month, as wages as navigator and master of the ship, and also the sum of seven hundred dollars, as commission for attending and procuring the purchase of said military stores, in Europe, for delivering and making the sale of the same in Chili or Peru, receiving the payment either in cash or produce of the Republics, and delivering the same in China, Europe, or the United States, he conforming always to the instructions and recommendations of said Butler and Carrington & Co. The said Mathewson is to have allowed him all travelling expenses and charges that attach to business. It is further mutually agreed between the aforesaid parties, that after delivering or depositing the proceeds of the aforesaid military stores, and completing and finishing the aforesaid agreement, according to the tenor thereof, a new voyage and adventure is to be begun in the following manner.

1st. The said Henry Mathewson is *there* to be admitted an owner in said ship of one-tenth part, at the rate of her first cost in the United States, including repairs on hull, sails and rigging, that may be put on her after her purchase, either in the United States, Europe, or elsewhere, and also owner of one-tenth part of her cargo, on such new voyage and adventure.

2nd. Said Butler, and Carrington & Co., agree to sell said Mathewson, and he agrees to purchase one-tenth of the ship on the terms herebefore described in article first.

3rd. Said Cyrus Butler and E. Carrington & Co. agree to furnish the sum of fifty thousand dollars (as a cargo for said ship) at the port where the said ship shall deliver and deposit the proceeds of said military stores.

4th. The said Mathewson is to allow said Butler, and E. Carrington & Co. interest at the rate of six per cent. per annum for his one-tenth of ship and

cargo, from the time the proceeds of the military stores (heretofore mentioned) are delivered or deposited in manner as heretofore stipulated.

5th. The said Mathewson is in the new voyage to have liberty to proceed to such ports, countries and places, backward any forward for trade, freight or other employment of the ship and cargo as he may think most for the interest and advantage of the concern in said ship and cargo.

6th. In this new voyage as before described, it is mutually agreed the said Mathewson shall have fifty dollars per month as wages as commander and navigator of said ship, to commence with the new voyage, and as supercargo a commission of five per cent. on the net amount all property safely *returned* to the United States, Canton, or Europe, proceeding from the original stock of fifty thousand dollars, together with one-tenth of all the profits and earnings made in the voyage or voyages, freights or otherwise.

7th. It is agreed that the wages and commissions specified and agreed for in the sixth article are to be in full of all services and privileges to Captain Mathewson as master and supercargo during the voyage or voyages heretofore specified, or otherwise.

It is understood that said Mathewson is to have no privilege in the first voyage heretofore specified, and that the wages and commission of seven hundred dollars allowed on that voyage are to be paid in the United States at the end of voyage.

Signed CYRUS BUTLER,
EDW. CARRINGTON & Co.
HENRY MATHEWSON.

B.

Schedule B, referred to in the preceding Bill.

Providence, Nov. 13, 1820.

CAPTAIN HENRY MATHEWSON,

Sir: We herewith hand you the letter of Mess. Lynch, Hill & Co. of Valparaiso, to Edward Carrington & Co. under date of June 15, 1820, accompanied with the contract made by their Mr. Lynch with General San Martin, commander in chief of the Chilian and Peruvian armies, and in behalf on said government. You will observe on perusal of the letter and contract, that the muskets, carbines and sabres expressed in the first article in the contract are to be furnished by Lynch, Hill & Co. *themselves*, and that the same articles mentioned in the second article are the ones intended to be supplied by ourselves, and are the same as we directed to be purchased by yourself in Europe, viz:

20,000 Muskets of good proof,
7,000 Carbines,
7,000 Cavalry Sabres.

The prices you will observe are stipulated at eight and a half dollars for the muskets, six dollars for the carbines and cavalry sabres, to be imported into Peru free of duties, and the proceeds or payment for the same is also allowed to be exported free of duties, the delivery of the said arms to be at any one port in Peru in possession of the Patriots under Gen'l. San Martin, or where, on your arrival at any one of said ports, Gen'l. San Martin may determine, on the coast of Peru. You will observe the contract provides that any articles, the produce of Peru, may be received in payment (at the current mar-

ket price) for the arms, always by the agreement and consent of both contracting parties, and that the same may be exported free of duties. You will also observe, that the *duties* on the import of any *other* articles of merchandize by said Lynch, into the port of Peru, are to be admitted towards the payment of the said arms. You will also observe it is understood, that if the payment is made in specie for said arms, it is permitted to be exported free of duties. Having explained the contract, our recommendations are, that you endeavour to have the arms shipped in Holland to as near the quantity and description as possible; but should there be difficulty in obtaining the exact quantity, a little differenee short of the numbers will be of no importance. We should recommend your having part of the ballast discharged in Holland, and a great part of the muskets, carbines and sabres stored on the ballast, and over them put your bread in hogsheads and barrels, and the boxes of glass, and the gin you ship in Holland, might a part be stored on the rum (now on board) forward and aft, and the remainder be put between decks. We think the ship has now on board 140 tons ballast, and the cargo you take on board in Holland will probably be from one hundred and ten to twenty tons, so you ought to discharge something like eighty tons, so as not to be too deep and prevent your sailing. We should recommend you having yonr arms divided in your invoices; that is, invoice 2,000 arms with your gin, glass-ware, powder, &c., as bound for Columbia river, &c. The remaining muskets, carbines and sabres have stowed low down, and have no account in your log-book or elsewhere of their being on board. Having got all on board, give Messrs. Commelin & Sons a receipt or bill of lading for the articles shipped in Holland, though take no papers with you from them, except such as relate to 2,000 muskets, gin, glass-ware, powder, &c., which will be always with your invoices and ship papers. Having got all on board as before remarked, proceed on your voyage, taking your departure for Columbia river, and continue to navigate for port, and let it be understood in Holland and on board the ship. Having reached off Valparaiso you will make for that port, and on approaching the harbour show a blue flag at the fore, and a white flag at the main, which will inform Lynch, Hill & Co. who you are, and they will send on board and give you the needful directions and recommendations; should no boat come off after waiting a sufficient time, you will go to an anchor, alleging you are bound for Columbia river and stopped in for water, &c. Having had an interview with Lynch, Hill & Co., you will afterwards proceed in all cases as may be most advisable for the accomplishment of the object in view. Should Gen'l. San Martin have been successful in his enterprise in Peru, we trust there will be no difficulty in having the contract complied with; on the other hand, should he have been unsuccessful, the arms will probably be wanted in Chili. Messrs. Lynch, Hill & Co. have suggested, that should a disappointment be experienced in Peru and Chili for a sale in the arms, that a market might probably be found in New Granada, but we should prefer closing the business in Peru and Chili if it should be practicable; however in this as in all other circumstances, your judgment must be exercised, and our interest your guide. Mess'rs. Lynch, Hill & Co. have also suggested that a cargo of Peruvian produce might be taken in payment for the arms and brought to Chili, and there sold, and specie obtained for the same and exported to China. In this proposition you must also be governed in what shall appear prudent and most calculated to secure our property and promise our interest. In the execution of this business it will require your best attention and cir-

cumspection to weigh well all points and circumstances, and in conjunction with Lynch, Hill & Co. pursue that course best calculated to have the contract complied with, taking care at the same time, as much as possible, to have the payment therefor placed under favourable circumstances, or if circumstances should have occurred to defeat the expedition and with it destroy the hope of having the contract complied with, you are then to adopt the next best plan to make the sales of our property to the best advantage. If the contract is complied with by Gen. San Martin, we should recommend your fully loading the ship with copper, (taking the same as payment towards the arms, particularly as it is to be allowed export free of duties, and taking copper may facilitate and help the government, and be the means of getting payment before the expiration of the eighty days limited in the contract, and taking the balance in specie and proceed immediately to Canton; or if the contract is not complied with, and you should make the sale in Chili or other place where copper can be procured at not exceeding fifteen or sixteen dollars the quintal on board, we should then also recommend your loading with copper, particularly if it should aid you in making sales of the arms, and then taking the balance in specie and proceed direct for China; after having disposed of the arms and obtained the payment for the same, it will be of much importance that you reach China as direct and with as little delay as possible. In order that a second deposit may be had for the property, and that a new voyage may be begun anew, without any regard to the present one, after reaching Canton you will deliver all our property to Messrs. S. Russell & Co., except the fifty thousand dollars, which you are to retain as a capital for the ship in any future operations you may think it advisable to undertake, *either* by trading or freighting according as you think most profitable for all concerned. Perhaps a cargo from China for Chili or Peru may be a good investment. However, after you get to Canton and take the fifty thousand dollars as a capital, you must be your own master, and do that which is best. Since you left here, the ship Beaver has arrived with cocoa at New York, and three other American vessels have also gone to Cadiz with cocoa, all from Guyaquil and Lima. The cocoa cost seven cents a pound on board, and we do not think it will bring more than 8 or 9 cents in this country or Europe clear of charges. Hicks, in the Louisa, paid ten dollars for his cocoa at Lima, and has gone to Rio Janeiro—poor business—we have a poor opinion of a cocoa voyage—Coquimbo copper is worth in Canton about 22 or 23 dollars per picul of 133 English; cochneal is worth in Canton about 600 or 700 dollars the picul; pure silver or *pina* is worth 5 per cent. more than dollars in Canton; copper in this country is worth about 18 or 19 cents per lb.; cochneal about 6 dollars the pound, according to quality; black is considered best; cochneal is good article in Canton. From the business we have had with Messrs. Lynch, Hill & Co., and from what others have told us, we are impressed with a belief of their honorable conduct, and we presume, should no circumstance have occurred to change their situation, you can place full reliance on their representations and advice; however with this good opinion of any house it's always prudent to be as guarded as circumstances will permit; should any circumstance have occurred to have affected the reputation of Lynch, Hill & Co. so as 'twould be insecure to intrust them with property to so large an amount, you must endeavor to employ any other good house; still there would seem some difficulty in this, as the contract is made in the name of Mr. Lynch; all we can say on this point is, that you must do

the best you can under all circumstances; you will let it be understood at Valparaiso that the ship and cargo belongs to Mr. Butler, as we fear Charles Higginson will give us some trouble should he know she belongs to us, he having made some demands for bad debts in the sale of the Lion's cargo, of which we know nothing about; you must avoid giving him any business, he does the Two Catharines, and now detains her because he cannot pay for the sales he has made. You will be mindful to obtain and send us lading certificates for the 40 hhds. rum. You will also be mindful to put this letter, the contract, and Lynch, Hill & Co.'s letter in a private place, so that they cannot be found in case of being boarded or detained. We have written to Messrs. D. Commelin & Sons to make out the invoice and bills of lading in the manner you may request. We think it would be advisable to put the rum, gin, glass-ware, powder, and 2,000 muskets into one bill of lading as shipped by yourself, bound for the N. W. coast of America, and the remaining muskets, carbines and sabres, have no account of on board in any manner. The accounts that Messrs. Commelin and Sons give you of the shipment, you may as well enclose to us, so as to have no more papers on board than are absolutely necessary. We think of nothing further to write, and have only to refer you to our verbal conversation before you left this country; you must carry in your mind our ideas as before explained to you, and be always thinking of what is best to be done under circumstances you meet with. Your family are well, and have written you by this conveyance.

PROVIDENCE, Nov. 14, 1820.

Capt. HENRY MATHEWSON,

Dear Sir :—We wrote you a few days since, advising of our having purchased the ship Mercury, of Mr. Snow. This ship is Philadelphia built, has been thoroughly examined, and newly coppered, and we think she is a prime ship; we have put on board abundance of provisions for eighteen months, or two years' voyage. Have shipped Mr. James, of Newport, and formerly with Capt. Elderkin, in the ship Integrity, for the chief officer, and Mr. Wheaton, the young man whom you saw here, for the second mate. Mr. James has had long experience as an officer, and has been master of a vessel. These officers we consider perfectly competent to take out the ship, and we believe you will find them faithful and useful men, and gentlemen in whom you can place entire confidence; we have directed Mr. James to proceed direct to the Texel, and there report himself as entering for *orders*, and await your instructions. We hope you will have the cargo we have directed to be shipped ready at the Helder, by the time of the arrival of the ship, so that no delay will be experienced in Holland. Having shipped the cargo we have ordered, or in case it cannot all be obtained, then such part as can be had, without too much delay, we request you will proceed direct to Columbia river, on the North-West coast of America, where you will commence your trade for sea-otter, land-otter, and seal-skins, and after having done all that is practicable there, you will proceed to Kodiac, and endeavour to make a barter trade with the Russian government of that settlement, taking furs in exchange; from this place, you may, if necessary, proceed to Okotsk, or St. Peters, and St. Pauls, on the coast of Kamtchatka, and then make a further barter trade for furs; should you not have finished your trade at Kamtchatka, you will, on your way to China, touch at the Sandwich Islands, and load with sandal-wood; having done all you can by the way of trade, during the summer of 1821, you will proceed to Canton,

so as to arrive their by January, 1822, which will enable you to load for home in time to save your passage down the China seas. At Canton, you will find with Messrs. Samuel Russel & Co., our instructions for the cargo home, which we omit giving you at this time, as the state and demand of our market for China products will doubtless change within a few months, when we can make our order with more security. We have endeavoured to put on board every article of ship and cabin stores for the voyage, and hope you will not find it necessary to make any expense for these articles. We think it will be necessary to purchase in Holland, duck, for heavy and light sails, which you can procure in Holland, for such descriptions as you think advisable; we should recommend Dutch canvass in preference to Russia, for both heavy and light sails: you will also want some bolt rope. In your expenses in Holland and elsewhere, we enjoin on you to be studiously economical, indeed the times and profits in commercial pursuits, do not authorize any *indulgence* in extravagance. In case you discharge any of the crew, you will observe there is some who have *draw bills*, and to charge them the time in advance, to give us time to have notice of the discharge, so that we can stop them here. Herewith you will find invoice of the 40 hhds. rum, intended for cargo, and a list of ship and cabin stores; many of the hogsheads that contain bread will answer for water-casks. There is also on board twenty coils of new rigging, intended for ship's use as *occasion requires;* we have also given the ship an extra new cable, although she in fact does not require it for the present, and an extra heavy anchor;—having put on board so much of every thing, in hopes you will not require much for a long time. If you want some charts of the Pacific ocean, you must get them in Holland. Mr. James ought to buy himself a sextant. Recollect to send us lading certificates for the rum, and write us every good opportunity. Recommending our interest to your constant care and attention, and wishing you a pleasant and prosperous voyage, we remain your friends and owners,

Signed C. BUTLER,
E. CARRINGTON & Co.

In case of accidents to yourself, Mr. James is to take command, and follow our instructions.

Signed C. B.,
E. C. & Co.

Subpœna.

RHODE ISLAND DISTRICT, *Sc.*

The President of the United States, to Henry Mathewson, mariner, Cyrus Butler, merchant, Edward Carrington and Samuel Wetmore, merchants, transacting business under the name and style of Edward Carrington & Co., all of Providence, in said district, and citizens of the [L. S.] State of Rhode Island and Providence Plantations, greeting:

For certain causes offered to our circuit court for the first circuit, and within and for the Rhode Island district, in chancery, we hereby command and enjoin you, and each of you, that laying aside all other matters and things, and notwithstanding any other excuse, you and each of you personally appear at the clerk's office of said court, in Providence, on Mon-

day the fifth day of April next, being the rule-day of said court, for said month, and then and there full, true, and perfect answers make, upon your corporal oaths, to the bill of complaint of Willard W. Wetmore, of the city of New Haven, in the Connecticut district, merchant, a citizen of the State of Connecticut, now filed of record in the clerk's office of said court; and to do and receive whatever our said court shall order against you, or either of you, in the premises in this behalf. Hereof fail not under the pains and penalties that may accrue in consequence of neglect thereof.

And the Marshal of said Rhode Island district, or his deputy, is hereby commanded to make service of this writ by reading the same to each of the aforesaid respondents, or by leaving a true and an attested copy thereof, at each of their respective places of abode, at least fourteen days prior to said rule-day; and hereof fail not, but true return make of this writ, with all his doings, on or before the rule-day aforesaid.

Witness the honourable John Marshall, our Chief Justice, at Providence, this 22d day of February, A. D. 1830.

BENJAMIN COWELL, Clerk.

UNITED STATES OF AMERICA, R. I. District, *sc.* } February 23d, 1830.

This day made service of this writ by reading the within, in the hearing of all the within named def'ts.

BARRINGTON ANTHONY, Marshal.

4 services $8.

Answer of Henry Mathewson.

In Equity.

RHODE ISLAND DISTRICT, *sc.*

Circuit court of the United States of America, holden at in and for Rhode Island District, on the fifteenth day of in the year of our Lord one thousand eight hundred and thirty.

The separate answer of Henry Mathewson, to the bill of complaint of Willard W. Wetmore, against him the said Henry Mathewson, Cyrus Butler, Edward Carrington, and Samuel Wetmore.

This defendant now, and at all times hereafter, reserving to himself all benefit of all exceptions to the numerous defects in said bill of complaint contained, for answer thereto, or so much thereof as he is advised by counsel is material for him to answer unto, answers and says, that he admits the making, execution, and delivery of said agreement; that he does not admit, nor does he know or believe, that the said Willard W. Wetmore ever was a partner in the house of Edward Carrington & Co., or that he ever had any interest in said ship Mercury and cargo, or in the concerns of said adventure. That he does believe, that if he, the said Willard W. Wetmore, ever had any interest in said ship Mercury and cargo, or in the concerns of said adventure, that the same interest ceased and determined long before the exhibition of said bill of complaint, and submits to this honourable court, that he the said Willard W. Wetmore ought to be holden to make proof of his said interest.

That on the twentieth day of October, A. D. 1820, he commenced the fulfilment of said contract, and the execution of the duties and trusts confided to him by the same; and on that day left said Providence for Boston, in order to embark for Europe, and soon after sailed in the schooner Janus for Rotterdam, and arrived at Helvitslius on the twenty-fourth day of November, in the same year, and proceeded for, and arrived at Rotterdam on the same day. That the ship Mercury, which had been purchased by the said Butler and Edward Carrington & Co., for the voyages named in said contract, arrived at the Texel on the twenty-second day of December, A. D. 1820, and was placed under his, this defendant's control and command, by which ship he received the instructions and orders of the said Butler and Edward Carrington & Co., bearing date on the thirteenth and fourteenth days of November, in the same year. That the set of orders and instructions given under the date of November thirteenth, were his true orders, which were meant to be executed; but were meant to be kept secret in case of his falling in with any Spanish vessel of war.

That the second set of orders, under the date of November fourteenth, were never meant by the said Butler and Edward Carrington & Co. to be regarded, attended to or executed by him the said Mathewson, but were given to him for the purpose of exhibiting the same as his true orders, to the officers of any Spanish vessel of war, with a view to deceive them as to the destination of the ship, and the objects of the voyage. That afterwards he proceeded with said ship to Bremen. That during his continuance in Europe, he received and had divers funds in money, drafts, merchandize, and otherwise belonging and appertaining to the owners of said ship, (the said Butler and Edward Carrington & Co ,) to the amount of sixty-two thousand and sixty-five dollars and fifty-four cents, as appears on the credit side of an account with said owners, stated in the schedule hereunto annexed, and numbered (1), which he prays may be taken as a part of this his answer, together with forty hogsheads rum which was shipped at said Providence, and made a part of said ship's cargo to Lima, and had also certain ship's stores, furniture, armament, and slops, which are specified in the annexed schedule, numbered (1 A), and (1 B), which he prays may be taken as a part of this his answer. That after leaving said Providence as aforesaid, he paid out for, and on account of said owners, the sum of sixty-one thousand nine hundred and sixty-eight dollars and twenty-two cents, for the several items contained on the debit side of the same account, and by his bill of disbursements contained on the schedule hereunto annexed, marked (2), which he prays may be received as a part of this his answer, the vouchers for which have been forwarded and delivered to said owners; and as this defendant verily believes are now in their hands and possession, making a balance of seventy-seven dollars and thirty-two cents against him, which he has credited to said owners in a new account with them, contained on the schedule hereunto annexed, and numbered (6), which he prays may be taken as a part of this his answer.

That while in Europe he purchased a cargo for and on account of said owners, and which is charged to said owners in said schedule (1) which, together with the said forty hogsheads of rum and ship stores, furniture, armament and slops, he placed as a cargo on board of said ship, for and on account of said owners for a voyage from Bremen to Lima, an invoice whereof is hereunto annexed marked (3) which he prays may be taken as a part of this his answer. That while remaining at Bremen he employed Messrs.

Frederick and Evarh'd Delius to purchase a part of said cargo, and on his settlement of accounts with them, they gave him a credit of the sum of four hundred and eighty-three rix dollars and forty-six pence (equal to) as cash paid, and which was never actually paid by him, and which they did not consider or intend to credit as belonging to the account of the owners; but this defendant at that time intended in the settlement of his final account, to mention to the owners the circumstance of this credit, and place the same to their credit if they should think it ought to be credited them. That he received on board said ship at Bremen, as an adventure for himself, one box containing twelve small swords, which were presented to him by a personal friend, measuring about two feet, for the voyage aforesaid; and for the freight of which he has given said owners no credit. That Benjamin James, the first officer, at the same place and at Amsterdam, took on board on account of his privilege, one box containing twenty-five dozen of cologne-water, nine boxes of tumblers, and forty cases of gin. That George Wheaton, the second officer, at the same place took on board on account of his privilege, one box of twenty-five dozen of cologne water, seven boxes of glass ware, and forty cases of gin. That otherwise than as aforesaid, there were no goods, wares or merchandizes taken on board said ship, or transported in her on said voyage. That on or about the sixth day of April, A. D 1821, he proceeded with said ship for Valparaiso, conformably to his orders aforesaid, where he arrived with said ship and cargo in the month of August in the same year; and soon after, under the advice of Messrs. Lynch, Hill & Co., he proceeded with said ship and cargo to Lima, taking with him Estanisloa Lynch, of the house aforesaid, his clerk, and two servants, and Judge Provost, the United States agent, Mr. Laurain, a Chilian gentleman and servant. They all found their own stores, and he charged them nothing for their passages, by advice of his friends residing there, as it was thought prudent to cultivate their friendship and favor in consequence of their high standing and reputation, in case of meeting with any difficulty with the officers of government there, and that he received no kind of compensation or gratuity from any of those gentlemen or their servants, except that from invitations from Messrs. Lynch and Provost; he resided with them free from expenses a considerable time. That at Lima he delivered the principal part of his said cargo to the said Lynch, to dispose of on account of the owners; a full account of the sales, disposition and losses of said cargo, and of the moneys actually received by him the said Mathewson therefor, are contained in the schedules hereunto annexed and numbered (4) (5) (6) and (A 4) which he prays may be taken as a part of this his answer. That while at Lima in the year 1822, he shipped forty-eight half pipes and seventy-three ankers of gin, containing thirty-six hundred and ten gallons, being part of said cargo from Bremen, and named in the schedule numbered (4) on board the brig Thetis, for Guaiaquil, consigned to Maskaline Clark, for and on account of his said owners, and at the same time in his own name, joined with the said Clark and the aforenamed Lynch without any authority therefor, in the purchase of other goods and merchandize, to the amount of twenty one thousand eight hundred and fifty dollars and twelve cents; the one-third part thereof he designed should be for and on account of the owners of said ship Mercury, and the other two-thirds part were purchased and owned by and were for and on account of the said Lynch and Clarke, and shipped the same on board the said brig Thetis for Guaiquill, consigned to the said Clark nominally, for and on his this defendant's own account, but

intending them to be on account of the owners and shippers thereof; and at the same time charged the owners of said ship Mercury with the amount of said shipment, that is, the whole costs of said gin $3610 00
And one-third part of said other goods and merchandize 7286 68
10,896 68

And advised said owners of said purchase, but to the present day they have not expressed their approbation or disapprobation thereof. That he charged said owners with the amount of said purchase money, and has credited them with the proceeds of the sales thereof, so far as the same have come to his hands, an invoice of which is contained on the schedule hereunto annexed, and numbered (7), and which he prays may be taken as a part of this his answer. At the same time he shipped on board the ship Fame, for Valparaiso, twenty-six barrels of powder, containing one hundred pounds each, part of said cargo from Bremen and the same which is named in schedule numbered (4), and consigned the same for sale to Horatio Jerauld, with orders to remit the proceeds to the said owners or to Edwin Jenckes, and charged the amount thereof to the owners of the said ship Mercury, ten hundred and forty dollars. That the said Jerauld has informed this defendant that he has sold said powder for forty cents per pound, and that he had remitted the neat proceeds according to orders, and that this defendant verily believes that the said Cyrus Butler and Edward Carrington & Co. have received the same. That while this defendant remained at Lima, he received from the said Clark the sum of three thousand eight hundred and ninety-two dollars and sixty-five cents on account of said joint shipment, which he at the same time passed to the credit of the owners of the ship Mercury. That he received accounts of sales from the said Clark, of the said gin and of said goods and merchandizes so shipped on joint account, and has remitted the same with other papers to said owners. That after receiving said sum of moneys from said Clark, and before he, this defendant, left Lima, he authorized and empowered Edwin Jenckes, of Valparaiso, to settle said adventure and shipment with the said Clark, and afterwards received from the said Jenckes divers copies of papers by him the said Jenckes received from the said Clark touching said adventure, which are hereunto annexed and numbered (8) (9) (10) (11) and (12) which he prays may be taken as a part of this his answer. That it appears by said schedule number (12) that the said Jenckes received from the said Clark the sum of six thousand eight hundred and ninety-seven dollars and thirty nine cents, as a balance of said consignment, which said sum, after deducting necessary expenses, he, this defendant, verily believes has been remitted by the said Jencks to the said Cyrus Butler and Edward Carrington & Co., or some one of them, and that they or some of them now retain the same unaccounted for to him this defendant. That while at Lima as aforesaid, he paid out divers sums of money for and on account of said owners, which are named in said schedule No. (6) in a bill of disbursements rendered by Benjamin James, and which this defendant delivered to said owners, and which they retain; and in the schedules hereunto annexed and numbered (13) (14) (15) which he prays may be taken as a part of this his answer. That in the credit of the sales of the cargo of the said ship at Lima, is included the whole of the amount of sales made to the Peruvian government, when in fact, the sum of four thousand five hundred and seventy-seven dol-

lars and sixty-nine cents had not been received by this defendant or the said E. Lynch & Co., but was left by this defendant unsettled and uncollected on his departure from that place, which sum is charged back by this defendant, to said owners. That after he had accomplished his business as far as practicable, at said Lima, he made up his account current with said owners, which is justly and truly stated in the schedule hereunto annexed and numbered (6), and in and by which there was then and there justly due to said owners a balance of thirty-three dollars and thirty-eight cents, which he carried forward to a new account.

That after having accomplished his business at Lima as aforesaid, at some time in the month of May or June, in the year 1822, he chartered the whole of the said ship Mercury to a merchant at Lima, by the name of Rodolpho, to take freight and passengers on a voyage from said Lima to Gibraltar, by Rio de Janeiro, for which he the said Rodolpho agreed to pay, and did actually pay to this defendant on the eighth day of June, 1822, the sum of fifteen thousand dollars; the ship to be manned, victualled and navigated at the expense of her owners. A special charter party of said ship for said voyage shewing the special conditions and provisions in said contract, was made and executed between this defendant and the said Rodolpho, and one part thereof being delivered to this defendant which he cannot produce and show to this honorable court, as he long since delivered the same with divers other papers relating to the different voyages he performed in said ship, to the said E Carrington & Co. who have wholly refused to return the same to him though often requested so to do.

That he, this defendant, at Lima shipped and took on board said ship for said voyage one hundred and thirty-five thousand three hundred dollars, $135,300, for and on account of said owners. That the said Rodolpho took on board said ship, ninety seven passengers, and large quantities of goods and money, belonging to them, for Rio Janeiro and Gibraltar. That he had at the time a list of the names of said passengers, which he lost on the explosion of the steam-boat Tilluce at Gurma. That he has not now the recollection of their names except those of Messrs. Guinacha, Banto Serano, Blanco, and Fillipe Zoldive. Those passengers were natives of the country, and leaving the same with their property, in consequence of the troubled state of the country, with an intent to settle in Spain. But from what part of the Peru they came, or in what part of Spain they took up their residence, he knows not, except as to the said Fillipe Zoldive, who was the brother-in-law of E. Lynch, and belonged to Lima, who performed the voyage around with him, and returned to Lima in said ship. That in consideration of the aid he had received from the said Lynch in the said business of said ship, and of the need this defendant had of a good interpreter, he agreed with the said Lynch to find provisions for the said Fillipe Zoldive, and during said voyage, the charter of the ship, gave him his passage. That there was no cargo or freight put on board said ship at Lima, or during said voyage to the knowledge of this defendant, except the goods and effects of said passengers, nor can he tell with what said ship was laden, as he had no invoice thereof, nor signed any bills of lading therefor, except that several passengers who had taken money with them on board, requested him to take special charge thereof, and to give them bills of lading therefor, which he declined doing, as by his contract with said Rodolpho he was not obliged so to do; and as the said Rodolpho had taken so many passengers on board with whose character he was unacquainted, that he was apprehensive of the actual safety of

the money on board. That by the strong solicitation of some of those passengers, he agreed to give them bills of lading or receipts for certain sums of money which they put under his special care and charge, on their agreeing to make him a compensation for his care and responsibility in the premises. To those persons he gave bills of lading or receipts, and received different amounts from different men for so doing. That he is now unable to state the number or names of the persons to whom he gave bills of lading or receipts as aforesaid, as well as of the precise amount which he received from them for his care and responsibility, as in the explosion of the said steam-boat he lost most of his private papers, among which were all the documents relating to this transaction; but according to his best recollection and belief, the whole of the compensation amounted to between two and three hundred dollars. That the amount received was collected by Samuel Clapp & Co., in Rio de Janeiro, from whom the amount may be ascertained. That before his departure from Lima on said voyage, he received from one J. S. Martinez, the sum of twenty-seven hundred dollars, for which he gave the said Martinez his private and personal receipt to be invested at Gibraltar in military clothing and other property on his account, but which was ever to appear in the name of this defendant, and to return the same to him, the said Martinez, in said ship, at said Lima. That this defendant was not to receive any compensation for carrying said money out, but was to receive fifty dollars per ton freight on all goods which should be returned to him from said Gibraltar.

That this defendant did at Gibraltar purchase and take on board said ship, and convey to Lima, military clothing and other merchandise, measuring one ton three feet, in his own name, but for and on account of said Martinez, and has credited said owners with the freight thereof. That he also received on board said ship at Lima, fifteen hundred dollars for and on account of Captain Bogman, of Providence, and carried the same to Gibraltar. That he has reason to believe, that the several officers and crew of said ship, had divers sums of money of small amount on board, but how much he cannot say. That other than as aforesaid, he knows of no goods, wares, merchandise, moneys, bills, or passengers, which were received on board said ship at Lima, on the voyage aforesaid. That about the middle of June, A. D. 1822, he sailed in said ship from Lima for Gibraltar by way of Rio de Janeiro, and arrived at Rio de Janeiro sometime the latter part of August, A. D. 1822, for refreshments and supplies. That while at that port, he paid divers expenses for and on account of said owners, which are contained in his bill of disbursements at that port, a copy whereof is hereunto annexed and marked (16), which he prays may be taken as a part of this his answer, and charged the same in account with them. That while at the port aforesaid, he received no goods, moneys, bills, or passengers on board for which he ever received or contracted to receive any compensation other than said fifteen thousand dollars freight money, except one passenger, whose name, then, and present place of abode he does not recollect or know, who went in said ship to Gibraltar from Rio, and was boarded out of the ship's stores, and on the arrival of said ship at Gibraltar, paid this defendant one hundred and fifty dollars for his passage and provisions, but which sum through mistake was not at the time credited to the said Rodolpho, the freighter, who was entitled to the passage money or to the owners, who were entitled to the pay for his provisions, but which said provisions are now credited to the owners in a new account of errors corrected. That sometime

in September, 1822, he sailed from Rio de Janeiro for Gibraltar, where he arrived sometime in November of the same year. That while at Gibraltar, he had on hand for and on account of said owners, the said sum of one hundred and thirty-five thousand three hundred dollars, shipped from Lima as above stated, together with divers sums of money then received for and on their account, amounting to the sum of one thousand seven hundred and fifty dollars and five cents, received on divers accounts, including the balance of his former account, making in the whole the sum of one hundred and thirty seven thousand and fifty dollars and five cents, which he then placed to the credit of said owners in his account, then made up, and which is hereunto annexed marked (17), which he prays may be taken as part of this answer. And that while remaining at the same port, he paid out for and on account of said owners divers sums of money, amounting to the sum of - - - - - - - - - $55,235 53

Which sum together with the sum of - - - - - 79,901 21

Left with Hill & Blodget at Gibraltar on the owners' account, and his bill of disbursements at Rio de Janeiro being - 884 64

Making in the whole the sum of - - - - - - $136,021 38

He charged to said owners, leaving a balance in his hands of 1,028 67

$137,050 05

And the account of sales of slop clothing marked (17a) and hereto annexed, he prays may be taken as part of this answer, tne amount thereof being credited in said account marked (17.)

The particular items of said account more fully appears in the schedule hereunto annexed, marked (18,) (19,) 20,) and (16,) which he prays may be taken as a part of this his answer, together with Hill & Blodget's bill, George Wheaton's bill, account of moneys paid seamen on second voyage, now in the hands of said owners. That at this time the first voyage named in said contract ended, and the new adventure in which he, this defendant, was to have and did take an interest of one-tenth part commenced, and at which time a new and distinct account ought to have been commenced, and continued until the final close of said adventure; but he confesses that in this particular he was remiss, and ever after kept his future accounts connected with the accounts aforesaid, in the same way and manner as if the new voyage and adventure had never commenced, and as if the same persons were interested in all the former and subsequent voyages, believing that after his return to Providence, he and the said Butler and E. Carrington & Co. could, might, and should with convenience and satisfaction to themselves, make out and state a proper and just account of said new voyage and adventure from his general account kept in manner aforesaid. That after having completed said first voyage and adventure at Gibraltar as aforesaid, he took a true and perfect inventory of all the ship's stores remaining on hand, and made use of the same on the second adventure; which inventory he requested the mate to register in the log book, but whether he did so register the same, he, this defendant cannot say, as the log-book is now in the hands of said Benjamin James or said owners. That said original invoice was lost in the explosion of the steam-boat before named. That this defendant verily believes, that the said stores were not of a greater value than one hundred dollars. That he sailed from Gibraltar for Rio de Janeiro in December 1822, and took on board as cargo sundry merchandise of the value of thir-

ty-nine thousand six hundred and twenty-two dollars and twenty-seven cents, as appears by the invoice thereof hereunto annexed, numbered (18), and specie to the amount of seven thousand and twenty-eight dollars as per the invoice thereof hereunto annexed, and numbered (21), which he prays may be taken as a part of this his answer, together with sundry goods on freight, which are specified in the schedule hereunto annexed, numbered (22), and which he prays may be taken as a part of this his answer; and in the log-book in the hands of the owners or mate. That he, this defendant and the said Benjamin James, jointly took an adventure on board, contained in one box measuring four feet. That the said James took other goods on board as a private adventure, which are specified in the annexed schedule, numbered (23), which he prays may be taken as a part of this his answer. That Cyrus B. Manchester took on board an adventure, which is specified in the annexed schedule, numbered (24), which he prays may be taken as a part of this his answer. That George Wheaton had a small adventure on board, but this defendant knows not the particular amount thereof; but knows that it was less than enough to fill his privilege. That he knows of no other adventure. That the private adventure of the said James, and his proportion of the joint adventure did not exceed his just privilege, nor did the adventure of said Manchester exceed his privilege. That the defendant took on board for and on his own account, forty-five kegs of lard; also, his half of one hundred and fifty pair of pantaloons, which he owned in company with Benjamin James, which were on board, making a bale of about eight feet, for the freight of which, and his portion of said joint adventure, he gave no credit at the time, but is now ready to account therefor. That the said Fillipe Zaldivi returned in said ship from Gibraltar to Rio de Janeiro and Lima free of expense as per agreement. That he took a Spanish gentleman, whose name, former or present place of abode, he does not recollect or know, as a passenger for Rio de Janeiro, for which he paid the sum of one hundred and fifty dollars. That he had on board about eighteen hundred dollars in gold, being a part of the money received at Lima from J. S. Martinez, which had not been invested, and still belonged to him, the said Martinez. That the said Zaldivi had on board a few boxes of raisins, for which no freight was received or agreed for. That other than as aforesaid, he knows not of any goods, wares, merchandise, moneys, bills, or passengers, taken on board of or transported in said ship at and from said Gibraltar, other than what might be contained in the private trunks or chests of the passengers, officers, and crew of said ship. That after leaving Gibraltar, he arrived with the said ship, cargo, money, and freight at Rio de Janeiro about the middle of February, A. D. 1823, delivered such freight as was shipped for that port, and purchased for and on account of the owners the goods, wares, and merchandise named in the schedule hereunto annexed, numbered (25), which he prays may be taken as a part of this his answer, at the costs and charges therein named. That while at Rio de Janeiro, he expended, paid, and shipped large sums of money for and on account of said owners, and also received large sums for and on their account, and then and there made up his account current with them, by which it appears that the balance of eight hundred twenty-eight dollars and sixty-seven cents ($828 67) was due from him, all of which more fully appears by the schedule hereunto annexed, and numbered (22), (26a), (26B), which he prays may be taken as a part of this his answer; and by the receipts on the portage bill now in the hands of the said Butler and E. Carrington & Co. That

he took certain freight on board at the same place, which appears in the freight list, number (22), and Benjamin James took on board an adventure of a few bags of sugar and some boxes of segars, of which this defendant has no account. And this defendant took on board about fifty boxes of segars on his own account at the same place. That he sailed from Rio de Janeiro in said ship with said cargo, &c. for Valparaiso about the twenty-fourth of February, A. D. 1823, and arrived at said Valparaiso about the middle of April in the same year. That while at that port, he sold a certain part of his cargo, which appears in the account of sales thereof, in the schedule hereunto annexed, number (28), which he prays may be taken as a part of this his answer. That while remaining there, he received a sum of money for the freight of goods from Gibraltar for that place, and paid out divers sums of money for and on account of said owners, as appears more fully in said schedule, number (22), and in the annexed schedule, number (29), which he prays may be taken as a part of this his answer. That while remaining at said Valparaiso as aforesaid, he had stolen from him a large sum of money then in his possession, belonging to said owners, which he has charged to them in his account, which is hereunto annexed. That at the time he received the account of sales aforesaid, he credited to the said owners the whole amount thereof, being thirty-one thousand one hundred three dollars and eighty six cents, ($31,103 86,) although at that time he had received only the amount of twenty-eight thousand one hundred and three dollars and eighty-six cents (28,103 86) thereon, the other three thousand dollars remaining unpaid when he left said port. That when he left that port, he gave an order to William S. Wetmore on Lynch, Hutz & Co. for that amount, and charged the same to said owners. That he took on board certain merchandise and three horses on freight, and six passengers, whose names and places of residence were unknown to him, all of which and whom together with the amount of freight and passengers are set forth in said schedule, number (22). That he knows nothing of the present place of residence of said passengers. That after having completed his business at that port, he made up his account current with said owners of his transactions up to that time, but did not close or balance the same till the month of January, A. D. 1824, a copy of which account, when the same was finally made up and balanced, is hereunto annexed, and numbered (30), which he prays may be taken as a part of this his answer. That about the twentieth day of June, in the same year, he departed with said ship, cargo, freight, and passengers from said port of Callao, where he arrived on or about the first of July next following, where he landed said freight and passengers, and sold and caused to be sold by E. Lynch & Co., a part of the cargo of said ship, amounting to the sum of ten thousand three hundred and five dollars and fifty-one cents ($10,305 51), as per account sales thereof, contained in the schedule hereunto annexed, and numbered (31), which he prays may be taken as a part of this his answer, and received certain freight and passage money for and on account of said owners as exhibited in the schedule aforesaid, number (22), and other sums of money, which are credited in said schedule, number (30).

That he paid out for and on account of said owners at Callao divers sums of money, and did and performed divers other matters and things for and on their account, all of which appears in schedule number (30) aforesaid, and in schedule hereunto annexed number (32) and (33), which he prays may be taken as parts of this his answer; and in divers papers and documents now in the hands of the said Butler and E. Carrington & Co. That he at the same port took

on board certain freight, which is named in said schedule number (22,) and one piano forte for the Governor, for which he was to receive five dollars, but never obtained payment, and two passengers with one servant and a boy belonging to said Lynch for Arica; said passengers were named Stanhope Provost, and Rafile Valasa, who belonged to Lima, and he presumes now reside there; to these persons he charged nothing for their passage, nor did he receive any thing from them or either of them other than their aid and assistence in procuring freight and passengers, and in transacting his other business at Arica which they agreed to render and did actually render him; said Stanhope Provost had a few chains on board for which no freight was charged. That he departed with said ship, cargo, specie, freight and passengers, from Callao to Arica on or about the middle of September in the same year, and arrived at said Arica in the latter part of October, and then landed a part of said freight, as appears by said schedule number (22) and sold a part of said cargo for twenty-four hundred twenty-six dollars and sixty-two cents, ($2426 62), net as per account of sales thereof contained in schedule number (34) which is hereunto annexed, and which he prays may be taken as part of this his answer; and took on board two passengers whose names he does not recollect, one of whom belonged to Lima and was an officer in the army; where the other belonged he does not know, nor does he know the present residence of either; an account of said passengers, and their passage money is contained in said schedule number (22). That the two passengers were taken from Callao, continued on board paying nothing for their passages under the former agreement. That at Arica he took on board other freight which appears by the said schedule number (22), and also a sum of money as freight for E. Lynch & Co. which by mistake is not named in said schedule number (22), for which he received the sum of one hundred forty-three dollars and two rials, which from a like mistake was not credited to said owners, and for which he is now ready and willing to account. That he departed from said Arica with said ship, cargo, specie, freight and passengers for said Callao on or about the twenty-fifth day of said October, and arrived at said Callao on the thirty-first day of the same month, discharged his freight and passengers, and sold a part of said cargo, amounting to sixteen thousand one hundred and ninety-eight dollars and twelve cents, ($16,198 12), as specified in the account sales thereof, in the schedule hereunto annexed, number (35), which he prays may be taken as part of this his answer. That while remaining at said Callao, he paid for and on account of said owners divers sums of money which are particularly specified in said schedule number (30), in the schedule hereunto annexed numbered (36), which he prays may be taken as part of this his answer, and in divers documents and papers now in the hands of said Butler & E. Carrington & Co. That he also received at this port from E. Lynch & Co. the sum of thirteen hundred eighty-three dollars fifty cents, ($1383 50), for balance due on voyage to Lima in 1822, per his account stated in the schedule hereunto annexed and numbered (37), which he prays may be taken as a part of this his answer, which is credited to said owners in said schedule number (30). That while remaining at Callao he took on board as freight for E. Lynch & Co. seventy-eight bales cotton for Canton, as appears by said schedule number (22,) and also agreed with them to proceed with said ship to Samanco, and then to take on board for them one thousand other bales of cotton on freight for Canton, and to take said Lynch's brother-in-law Fillipe Zaldivi as a passenger on board for Canton, to take

charge of said cotton, passage free. That before leaving Callao he purchased for and on account of said owners ten quintals of old copper at the price of one hundred and one dollars and ninety cents, ($101 90.) That he sailed in said ship from Callao on or about the first day of January, A. D. 1824, for Canton by Samanco, leaving in the hands of Messrs. Nixon and Nicol nineteen barrels of Malaga wine, being part of the cargo of said ship from Gibraltar, and retaining on board said ship a portion of the former cargo of said ship from Gibraltar, viz: Eight bags coffee; two barrels white wine; four barrels brandy; seventy-one dozen porter; six cases gin; two bags sugar; two firkins butter; two pieces sheeting; forty-five pieces duck; twenty-four kegs tobacco; two casks linseed oil; eight barrels beef; together with all the specie in the hands of this defendant, to said owners belonging, a more particular account whereof is hereinafter stated. That he arrived at Samanco about the third of the same month; that on the second day of his arrival, a letter was received by the said Zaldivi, the agent of said E. Lynch and Co., from the governor of Santa, that the said thousand bales of cotton could not be delivered in consequence of the Governor's having taken up all the mules in the country which were needful to transfer the cotton from the interior to the coast. That they sailed on the same day, and arrived at Whangwho the port of Tuxillo, on or about the sixth day of the same month; that while lying there, he purchased and took on board for and on account of said owners, a quantity pina and silver, to the amount of twenty-five thousand nine hundred sixty-two dollars and seventy-five cents, ($25,962 75), in which purchase he paid away all the gold belonging to said owners. That on the ninth of the same month he sailed from the last mentioned port for Gayta, and arrived there on the twelfth; that at the same place he purchased and took on board said ship, for and on account of said owners, a quantity of pina and silver, to the amount of seventeen hundred forty-four dollars, ($1744 00); and fifty bales of cotton to the amount of three hundred dollars, and paid port charges and expenses to the amount of seventy-six dollars and seventy-five cents, as appears by the invoice of the cargo of said ship for Canton in the schedule hereunto annexed, and numbered (38), which he prays may be taken as a part of this his answer.

That while remaining at said port he paid out divers sums of money for and on account of said owners, which are specified in said schedule, number (36.) That the schedule hereunto annexed and numbered (39) shows the final disposition of the cargo of said ship from Gibraltar to Callao, and which he prays may be taken as a part of this his answer. That after leaving the last mentioned port, and before his arrival at Linton, near Canton, he closed his last open account with his said owners up to that time, which is the same account heretofore named, number (30.) That he arrived at said Linton with said ship, cargo, freight and specie, on or about the tenth day of April, A. D. 1824, and at that place took on board a quantity of goods from an English ship to freight to said Canton, which he carried in said ship to said Canton, and received for the freight thereof the sum of five hundred dollars, ($500 00.) That he also at the same place took on board a number of boxes of dollars, the number and amount not recollected, from the ship George, Capt. Rea, for Canton, and belonging to said E. Carrington & Co., which he delivered to Samuel Russell & Co., for the freight of which he expected to receive a reasonable compensation from the said Samuel Russell & Co.; but on a settlement with them they declined paying, and did not pay anything.

That he proceeded from said Linton for Wampoa, where he arrived about the sixteenth of said April. That about this time George Wheaton, mate of said ship, demanded his discharge, alleging that the voyage for which he had shipped had terminated; and this defendant, on the twentieth day of the same month, gave him his discharge, with an order of that date on said E. Carrington & Co. for five hundred and three dollars and sixty cents, ($503 60,) being the amount of wages due him. That soon after he took the specie and cargo of said ship to Canton, on shore at that place, and sold and disposed of the same while remaining at that port for the sum of forty-nine thousand nine hundred and fifty-five dollars and twenty-six cents, ($49,955 26,) as appears by the account of sales thereof in the schedule hereunto annexed and numbered (40,) which he prays may be taken as a part of this his answer. That he next proceeded to purchase and did actually purchase a return cargo for said ship, and for and on account of said owners, amounting to the sum of forty-five thousand eight hundred twenty-nine dollars and ninety-two cents, ($45,829 92,) as appears by the invoice thereof contained in the schedule hereunto annexed and numbered (41,) which he prays may be taken as a part of this his answer. That while he remained at said port he paid to the crew of said ship on account of wages then due, the sum of ten hundred fifty-four dollars and thirty-seven cents, ($1054 37,) as appears by the schedule hereunto annexed and numbered (42,) which he prays may be taken as a part of this his answer. Also, divers other sums of money as disbursements for said ship, amounting to three hundred thirty-four dollars and sixty-two and half cents, ($334 62½,) as appears by the schedule hereunto annexed and numbered (43), which he prays may be taken as a part of this his answer. And also a further sum of money to Samuel Russell & Co. for disbursements by them paid for and on account of said owners, amounting to six thousand and eight dollars and ninety cents, $6,008 90, as appears by the schedule hereunto annexed and numbered (44,) and which he prays may be taken as a part of this his answer. That after having disposed of his outward cargo, he paid the expenses of said ship, and purchased a return cargo for said ship as aforesaid, he made up and balanced his further accounts with said owners, in which a balance of four hundred seventy dollars and fifty-six cents ($470 56) were found due from this defendant to them, as appears by the schedule hereunto annexed and numbered (45,) which he prays may be taken as a part of this his answer. That while remaining at Canton he took on board divers goods on freight for South America, from divers persons; the copies of the invoices whereof, with the rates of freight noted on each, are hereunto annexed and numbered 46, 47, 48, 49, which he prays may be taken as a part of this his answer. That he, this defendant, on his own account shipped on board on freight three tons of merchandise, the invoice of which, together with all his original invoices from Canton, were lost in said steam-boat, the freight of which is credited by him to said owners. That said Benjamin James took on board an adventure exceeding his privilege by amount of four tons, for which he has paid freight, the invoice of which was lost in the same boat; that he has not any recollection of the particular items or costs of said adventure. That the two mates had adventures on board, the particular accounts of which were lost in said steam-boat; but he, this defendant, recollects that their adventures did not exceed their privileges allowed, the particular items and costs of which he knows not. That at Wampoa he took on board a few boxes of merchandise for Perkins & Co., which he delivered

on board a boat for them, near Linton, for which he did not charge nor receive any freight. That on or about the twenty-seventh of June, A. D. 1824, he departed with said ship, cargo, specie, and freight for South America; that on the eleventh of July following, in consequence of damages sustained by said ship from a gale of wind, he proceeded with said ship for Monterrez, in South America, as the most convenient port for repairs, where he arrived on the twenty-fifth day of October, in the same year, where he paid large sums of money for and on account of said owners for repairs and otherwise, which are particularly named in the schedule hereunto annexed and numbered (50,) which he prays may be received as a part of this his answer, amounting to the sum of ten hundred fifty-two dollars and six and a half rials, and sold certain parts of said cargo, amounting to twenty-two hundred twenty-nine dollars four and a half rials, as by the account of sales thereof contained in the schedule hereunto annexed, numbered (51,) which he prays may be taken as a part of this his answer. That he sold by retail to the crew and others divers portions of the goods and merchandise belonging to said owners, which were retained in said ship at Callao, at the time of her departure from that port, amounting to four hundred thirty-six dollars and thirty cents, as appears by the schedule hereunto annexed, numbered (52,) which he prays may be taken as a part of this his answer. That a part of the duck retained on board at said Callao was made use of for making new sails for said ship, after having sustained the disaster aforesaid. That he departed from said Monterrez for Mazattan, on or about the first of January, A. D. 1825, and arrived at Mazattan on the twenty-first of the same month, at which place he expended divers sums of money for and on account of said owners, which are specified in the schedule hereunto annexed, numbered (53,) which he prays may be taken as a part of this his answer, amounting to sixteen hundred sixty-nine dollars and two and a half rials; that at the same place he sold and disposed of a part of said cargo, amounting to the sum of thirty-two thousand one hundred and sixty-three dollars and six rials, gross, from which sum is deducted divers expenses at that port, and divers sums uncollected on said sales, amounting to the sum of twenty-seven hundred and five dollars and six rials, leaving a balance of twenty-nine thousand four hundred and fifty-eight dollars, which sum he credited said owners, as appears by the schedule hereunto annexed and numbered (54,) which he prays may be taken as a part of this his answer. That at this port a part of the freight on board was disposed of and delivered and a note thereof made in his sales book. That before leaving this port he took on board a quantity of pina, and specie, and drafts or bills of exchange for and on account of said owners and others; invoices of which are hereunto annexed and numbered 55 and 56, which he prays may be taken as a part of this his answer. That at said port he took a sailor on board who worked his passage from thence to Guayaquil.

That on or about the twentieh of March in the same year, he left said port and sailed for Lima; that after leaving Mazettan, he received on board thirty-seven zeroons of coffee from Don Desantos, to retain as a collateral security for the payment of a draft which he had given this defendant on Juan Jose Lartier, and for which no freight was to be paid; that while at Mazattan he had a survey made on the cargo of such parts thereof as could be seen by the surveyors, when fifteen boxes of nankeens of one hundred pieces each were found damaged, the survey was forwarded to said owners, or was lost on board said steam-boat. That after having been at sea about

two months, he put away for Guaiaquill, where he arrived on the third of June next following. That on his arrival at Guaiaquill, he caused a survey to be had on said ship, by two ship masters, one shipcarpenter, and one merchant, all citizens of the United States, who after having given two full examinations of said ship, reported, that twenty-five thousand dollars would not repair the ship fit for sea, and ordered her to be sold for the benefit of all concerned. And this defendant says, that said ship was then and there very much out of repair and worn, rotten and decayed, and unsafe to voyage in, and unfit to carry property, and not worth the necessary expenses of a proper repair. That thereupon he discharged the cargo, specie, and freight, and stores, and stripped the ship, and on the twenty-seventh day of said June, caused said ship, her apparel, furniture, and appurtenances, &c., to be sold in different lots at public auction. That he also sold and caused to be sold divers stores and other things appertaining to said ship at private sale, all which appears in the schedules hereunto annexed and numbered 57 and 58, and (B 58) which he prays may be taken as a part of this his answer. That before the exhibition of the complaint of the orator against him this defendant in this case, he delivered to the said Edward Carrington & Co. the said auctioneer's account of sales of said ship, appurtenances, &c., which they still retain from him, and which he cannot now produce. That on or about the seventh day of said June, he shipped on board a French brig of war, commander's name he does not recollect, for Lima, forty-seven thousand two hundred thirty-eight dollars one and one quarter rials in gold, silver, pina and dollars, being the proceeds of the sales of goods at Mazattan, on account of said owners and others, which was transferred from said brig to the United States ship of war United States, Isaac Hull commander. That on or about the same time he shipped on board the brig Marossa, William Skidde master, for Lima, a quantity of goods as per invoice hereunto annexed and numbered (59), which he prays may be taken as a part of this his answer, for and on account of said owners and himself; consigned to Messrs. Alsop, Whitman & Co., merchants there. That the remaining part of said cargo, freight and adventures, he landed at Guaiaquill. That at the same place said goods were deposited in the custom house stores, from which divers articles were stolen, and from which place he shipped sundry boxes of hats on board the ship General Smith, Mathew Robinson master, for Lima, consigned to said Alsop, Wetmore & Co., as per the schedule hereunto annexed, numbered (60), which he prays may be taken as a part of this his answer. That while he remained at said Guaiaquill, he paid the officers and crew of said ship divers sums of money for the wages due them, amounting to forty-five hundred thirty-four dollars and ninety-three cents; as appears by schedule numbered (61) hereunto annexed, which he prays may be taken as a part of this his answer. That at the same place he paid out divers other sums of money for and on account of said owners, amounting to thirteen hundred twenty-four dollars seven and three quarter rials, as appears by schedule number (62) hereunto annexed, which he prays may be taken as a part of this his answer. That at the same place he sold divers parts of said cargo for the sum of seventeen thousand and eighteen dollars and seven rials, as appears by the schedule hereunto annexed numbered (63), which he prays may be taken as a part of this his answer. That at the same place he sold other parts of said freight, as appears by said schedule numbered (22). That from the same place he shipped on board the English cutter, the Fifeshire, master, a quantity of goods and twenty-two thousand dollars

in specie, belonging to said owners and others, for Lima. The specie was transhipped on board the United States ship United States at Lima, and the goods delivered to the house of Alsop, Whitman & Co. The invoice of the said last parcel of goods consigned to the said Alsop, Whitman & Co., was forwarded to them, and no duplicates thereof remain with him, but he thinks he did take a duplicate thereof, which was lost on board said steam-boat. That the original account of sales of all the goods sold by said Alsop, Whitman & Co. on account of said owners, has been placed in the hands of Edward Carrington & Co., and has been retained by them. That on the twelfth of September in the same year, at said Guiaquil, he took on board said steam-boat Pillica for Lima

600 doubloons, amounting to $10,200, } belonging to said owners
240¾ castilas of gold dust, 541 5½ rials, } and others.

4 embroidered crape shawls,
200 tortoise shell combs,
6 pie. grass handkerchiefs, } belonging to said owners.
72 shirts,

That while remaining at Guiaquil, Benjamin James, as this defendant verily believes, took possession of said log-book of said ship, of which this defendant advised the said Butler & E. Carrington & Co., by letter dated 22d July, A. D. 1825, and advised them to get possession of the same from him, and which this defendant has never since seen. That on the same twelfth day of September, he departed from said Guiaquil in the same steam-boat for Lima, leaving a part of said cargo at Guiaquil in the hands of Messrs. Bartlett & Levert, merchants there, to be sold for and on account of said owners, the particulars whereof appear in divers schedules hereunto annexed, and arrived at Guama on or about the ninth day of October next following, and on the next day, while this defendant was on shore with several other passengers, an explosion of said boat took place, occasioned as he was informed and verily believes, by fire having been designedly communicated to a large quantity of powder stowed in the run of said boat with the trunks and baggage of the passengers, by a man who pretended to be the owner of the boat; by reason of which about fifteen persons lost their lives, among whom was said owner and the master of the boat, and several others badly wounded, among whom was the mate; the decks of the steam-boat blown off, most of the property on board destroyed, blown overboard and lost, among which was all the specie and all the goods he had on board, except one shawl which was much damaged, together with nearly all his private books and papers relative to his own individual concerns, and some of the books and papers which related to the general concerns of the said owners. That on his return to the boat with the passengers who had been on shore with him, at the request of the mate and passengers he took charge of the boat and the remaining property. That on the next morning he took a station in a conspicuous part of said wreck, and caused an examination and search to be made for every thing which remained on board; that every thing which was found was brought to him as found, of which he took an account as it was presented, and which was then passed to the chief engineer for safe keeping. That after said search and examination was completed, the engineer was requested to bring forward every thing in his possession into the presence of all the survivors for their inspection. The goods and specie found was again examined, and an inventory thereof taken

by some of the other passengers, which was found to agree with the account first taken by him this defendant. The money found was examined and counted over by each of the surviving passengers. In taking the account, all the money found loose was taken an account of together; that which was found in trunks, was inventoried by itself, showing the quantity found in each trunk, with notes annexed, showing the marks and numbers of each trunk from which it was taken. Such of the goods and clothing as were claimed by the respective survivors were delivered to them; what was known to belong to the master and owner was delivered to the mate or engineer. No part of the money found was claimed by any of the survivors. On a general consultation among the survivors, it was resolved that the money and other property saved not belonging to the survivors, owners or master, should be delivered to this defendant, as he was the greatest sufferer on board. The loose money found amounted to six hundred twelve dollars; and all the money found in trunks, and the few articles of other property found on board was carried by this defendant to Lima, at which place, at the request of the Columbian consul residing there, he delivered to such persons, whom he pointed out as the surviving friends of the deceased passengers, such of said money and other property as they proved to his satisfaction, belonged to their respective deceased friends, and all the residue thereof, except the said six hundred twelve dollars, he delivered over to said consul for the use of the legal representatives of the late owners thereof, whenever they should appear. That as it was impossible ever to ascertain to whom the said six hundred and twelve dollars belonged, by the assent and recommendation of said consul, mate and passengers, he still retained the same. That he struck an average of said last mentioned sum among the several persons whose money had been lost on board said boat, according to the several amounts which they had lost, as appears by said statement of average hereunto annexed and numbered (64,) which he prays may be taken as a part of this his answer. That on the twelfth day of the same month he with the other passengers left said wreck, went on shore, procured mules, and proceeded to Lima, where he arrived about the last of October in the same year. That while at Lima he sold and disposed of certain merchandise for and on account of said owners to the amount of $25,266 ½ rial (twenty-five thousand two hundred and sixty-six dollars and half a rial) as appears by the schedule hereunto annexed and numbered (65), which he prays may be taken as a part of this his answer. That while at Guiaquil and when he was about placing said specie on board said steam-boat, he was assisted by Captain David Proudfoot in putting the same up and getting the same on board, secretly and without the knowledge of the officers of the customs, to avoid the payment of an export duty thereon. That the said Proudfoot counted and packed up six hundred doubloons a part of which he took and concealed about his person, a part was taken by Mr. Sweat, one of the firm of Bartlett & Sweat of Guiaquil, who concealed the same as aforesaid; another part was taken by the chief officer of Captain Proudfoot's ship and concealed as aforesaid, and the residue by him this defendant, and concealed as aforesaid; after which the whole of said persons with said doubloons proceeded together on board said steam-boat, and there deposited the same. That after he arrived at Lima as aforesaid, he received from said Proudfoot through the hands of said Bartlett & Sweat a certificate of his knowledge of the shipment of said doubloons, sworn to before the American consul at Guiaquil, which said certificate, with this defendant's protest made at Lima,

were afterwards in the month of May, A. D. 1826, forwarded by this defendant to said Edward Carrington & Co., and Cyrus Butler, from Canton. That he has no other documents proving the shipment and loss of the specie, gold dust and merchandise aforesaid, and which said certificate and protest are retained by the said Butler & E. Carrington & Co. That after his arrival at Lima as aforesaid, he made up his account current with said owners touching his business, receipts and payments for and on their accounts, which is hereunto annexed and numbered (66), which he prays may be taken as a part of this his answer. That he also made out a schedule of the cargo of the said ship Mercury, at Canton, in June, A. D. 1824, and how and where the same was disposed of, which is hereunto annexed and numbered (67), which he prays may be taken as a part of this his answer. That he also made up an account of the expenses of repairs made on the ship Mercury in consequence of being dismasted on the eleventh of July, A. D. 1824, on the coast of Japan, which is hereunto annexed and numbered (68), which he prays may be taken as a part of this his answer. That he also made up an account of the average accruing in consequence of the same disaster which is hereunto annexed and numbered (69), which he prays may be taken as a part of this his answer. That on the third day of November, A. D. 1825, at Lima, he in his own name, chartered of Captain Ebenezer Andrews, three-fourth parts of the ship Superior, belonging to the said Cyrus Butler, Edward Carrington & Co. and B. & T. C. Hoppins, and of which the said Andrews was master, on a voyage to Manilla, Canton, and back to South America, as appears by a copy of the charter party, which is hereunto annexed and numbered (70), which he prays may be taken as a part of this his answer. That he took on board said ship Superior, chartered as aforesaid for Canton, a quantity of gold, silver, and specie, of the value of $128,096 6½ rials, (one hundred twenty eight thousand and ninety-six dollars and six and half rials) an invoice whereof is hereunto annexed and numbered (71), which he prays may be taken as a part of this his answer. That the same gold, silver and specie, belonged to the following persons, as follows:

To Perkins & Co. - - -	$28,742 00
" Charles W. Talbot - - -	570 87
" Samuel Russell & Co. - -	2,661 94
" Thomas T. Forbes - -	1,570 62
" Owners of ship Mercury -	73,371 18
" Henry Mathewson - -	20,775 50
" E. Lynch - - - -	238 20
" Stanhope Prevost - - -	166 50
	$128,096 81

That afterwards, on or about the twenty-eighth day of November, A. D. 1825, he sailed in said ship with the said gold, silver and specie on board for Canton, by the way of Pita and Manilla, leaving sundry articles of merchandise, part of the cargo of the ship Mercury, in the hands of Messrs. Alsop, Wetmore & Co. for sale, for and on account of said owners of the same ship, which are specified in the schedule hereunto annexed and numbered (72,) which he prays may be taken as a part of this his answer. That he arrived at Pita on or about the third of December next following for refreshment, whe he and the said Andrews purchased and took on board

old silver of the value of $247 84 (two hundred forty-seven dollars and eighty-four cents) on their own account, and sailed from there the day next following, and arrived at Manilla on the eighteenth of February, A.D. 1826; where he purchased a cargo of rice and poddy, for and on account of the said owners of the said ship Mercury and the said Andrews, master of said ship Superior, an invoice whereof is hereunto annexed and numbered (73), which he prays may be taken as a part of this his answer; three-fourth parts he charged to said owners of the ship Mercury. That while at Manilla he paid out divers sums of money for and on account of said owners and said Andrews, which are specified in the schedule hereunto annexed, and numbered (74), which he prays may be taken as a part of this his answer; three-fourth parts whereof he charged to said owners. That while at the same place he and the said Andrews purchased and took on board on their own account about fifteen pounds of tortoise shell. That at the same place he took on board on freight for Canton (1018) ten hundred and eighteen bars of iron on account of Burett & Co. That he sailed from said Manilla for Canton on or about the seventh day of March next following, and arrived at said Canton on or about the fourteenth of the same month, at which place he sold said cargo of rice and poddy, the account sales whereof hereunto annexed, and numbered (75), which he prays may be taken as a part of this his answer. That at the same place he sold the whole of said gold, pina and silver from the former cargo of the ship Mercury, among which was found a large quantity of copper nails, old iron, dirt, and two four-pound copper shot, an account sales whereof is hereunto annexed, and numbered (76), which he prays may be received as a part of this his answer. That at the same place he purchased and took on board divers goods, wares and merchandise of the produce and manufacture of that country, for and on account of the owners of said ship Mercury, and the said Andrews, master of said ship Superior, an invoice of which is hereunto annexed, and numbered (77), which he prays may be taken as a part of this his answer. That at the same place he purchased and took on board for and on his own account divers goods, wares and merchandise of the produce and manufacture of that country, an invoice whereof is hereunto annexed, and numbered (78), which he prays may be taken as a part of this his answer. That at the same place he took on board divers goods, wares and merchandise belonging to divers persons, on freight for South America, as per the invoices thereof hereunto annexed, and numbered (79) (80) (81) (82) (83) (84) (85) (86). That at the same place took other goods, wares and merchandise on board on freight for Linton, for which he received $860 50, (eight hundred and sixty dollars and fifty cents) for three-fourths of which he credited said owners of the ship Mercury. That while remaining at Canton he paid out divers sums of money for and on account of the said owners of the ship Mercury and said Andrews, which are specified in the schedule hereunto annexed, and numbered (87), which he prays may be taken as a part of this his answer. That while at Canton he made up his account current with said owners, which is hereunto annexed, and marked (87 A), which he prays may be taken as a part of this his answer. The several accounts of sales of freight taken on board at Canton as aforesaid are hereunto annexed, and marked C, D, E, F and G, which he prays may be taken as a part of this his answer. That he sailed from said Canton, in said ship Superior, with said cargo, freight, &c. on board for Valparaiso, on or about the seventh of June in the same year, at which place he arrived in said ship on or about

the fifth of October next following. That at said Valparaiso he disposed of a part of said cargo, an account of sales whereof is hereunto annexed, and numbered (88), which he prays may be taken as a part of this his answer. That at the same place he paid divers sums of money for and on account of said owners and the said Andrews, which appear in the schedule hereunto annexed, and numbered (89), which he prays may be taken as a part of this his answer. That at the same place he retained for freight on the goods before taken on freight as aforesaid, and then sold his three-fourths of $1494 25 cts., as appears by the freight-list hereunto annexed, and numbered (90), which, with the statements subjoined thereto, he prays may be taken as a part of this his answer. That five set of trunks, one set of clothes-baskets and two lob chains, were with other goods deposited in the custom-house stores at said Valparaiso, and were either retained by the officers thereof, or stolen therefrom, as the same has not been accounted for. That on or about the fourteenth of the same month he sailed in the same ship with the residue of said cargo and freight for Lima, where he arrived on or about the twenty-second of the same month, and landed said cargo and freight, which was completed on the seventh day of November next following, and said ship Superior was given up to the said Ebenezer Andrews, the master. That on the sixteenth day of December, A. D. 1826, he shipped to the said Butler, and E. Carrington & Co. from Lima, twenty thousand dollars in specie, in the ship Superior, Capt. Andrews, as appears by the invoice thereof, hereunto annexed, and numbered (91), which he prays may be taken as a part of this his answer, which, with the charges thereon, amount to $21,042 (twenty-one thousand and forty-two dollars.) That on the fifteenth day of January, A. D. 1827, he shipped to the said Butler, and E. Carrington & Co. from Lima, the sum of $30,000 (thirty thousand dollars,) by the ship Portia, Capt. Samuel C. Tripp, master, as per the invoice thereof hereunto annexed, and numbered (92), which he prays may be taken as a part of this his answer; which, with the charges thereon, he charged to them. That while he remained at said Lima he paid divers sums of money, for and on account of said owners, the items whereof appear in his account current with said owners, and is hereunto annexed. That while he remained at the same place he received from the said Alsop, Wetmore & Co. an account of sales of sundry merchandise left with them for sale in the year 1825, for and on account of said owners, amounting to the sum of $1804 7½ rials, (eighteen hundred and four dollars and seven and a half rials), as appears by the schedule hereunto annexed, and numbered (93), which he prays may be taken as a part of this his answer, and credited same account to said owners. That afterwards, on or about the sixteenth of January, A. D. 1827, he left said Lima for Valparaiso, on board said ship Portia, to finish the settlement of the ship Superior's business at this place, and agreed to pay the master the port-charges of his ship at that place for his stopping there, with this defendant, for him to settle the business of said ship Superior, which port-charges amounted to seventy-nine dollars and twelve and a half cents, which sum he paid and charged to said owners, and arrived there on or about the fifteenth of February next following. That at Valparaiso he purchased a quantity of copper for and on account of said owners, an invoice whereof is hereunto annexed, and numbered (94), which he prays may be taken as a part of this his answer. That he sailed from Valparaiso in said ship Portia for the United States of America, by the way of Coquimbo and Huasco on or about the twentieth of said February. That in the month of March

following he arrived at said Huasco. That while at Valparaiso, Coquimbo and Huasco, he incurred and paid divers expenses for and on account of said owners, which are named in the account thereof hereunto annexed, and numbered (95), which he prays may be taken as a part of this his answer. That he sailed in said ship from Huasco some time in the same month, and arrived in the city of New York in the early part of June in the same year 1827, and some time in the same month he arrived in said Providence. That from after his arrival in said Providence, he delivered to the said Edward Carrington & Co. his final account current up to that time, a copy whereof is hereunto annexed, and numbered (96), which he prays may be taken as a part of this his answer. That on his arrival at Lima in October, A. D. 1826 as aforesaid, he delivered into the hands and possession of the said Alsop, Wetmore & Co. all of the cargo and freight of said ship Superior not before disposed of as aforesaid or hereinbefore accounted for, for them to sell and account for; that they did proceed and sell portions thereof, as hereinbefore stated, before this defendant's departure from said city; that at his departure from said Lima as aforesaid for Valparaiso in January, A. D. 1827, he left in the hands of said Alsop, Wetmore & Co. all the residue of said Superior's cargo and freight not previously disposed of as herein before stated and accounted for; that since his arrival at home this defendant has been advised by said Alsop, Wetmore & Co., and verily believes that they have sold the principal part of said goods so left, and have sent their account of sales thereof and their accounts current, to the said E. Carrington & Co. and C. Butler, and this def't has also received from said Alsop, Wetmore & Co. copies of their said accounts of sales and accounts current so sent since his arrival home, copies of which are hereto annexed, and marked (97) and (98) (99) and (100). That since his return home he has also received an account of sales from said Bartlett & Sweat of divers goods left with them as aforesaid, a copy whereof is hereto annexed, marked (102), and made part of this answer, the net amount mentioned and credited in which he has received since the commencement of this suit, and credited in his account in schedule marked (106.)

And this defendant further answering, says, that while he was at Gibraltar with said ship Mercury as aforesaid, in December, A. D. 1822, the said Benjamin James, then first mate of said ship, who, previously to this defendant's taking command of said ship had brought said ship out as master from the United States as aforesaid, and who was then and there in December, 1822, at said Gibraltar entitled to his discharge, refused to proceed any farther in said ship as mate, but was willing to remain in said ship, and proceed in her again round Cape Horn for the pay and in the capacity of master, and not otherwise. That therefore this defendant, in consideration that he could then find at Gibraltar no other person in whom he could place confidence as first mate of said ship, or who was competent for that situation, and that the interests of the owners of said ship required an arrangement to be made to retain the services of said James, was induced to enter and did enter into a contract with said James, wherein and whereby it was agreed by and between this defendant, for and in behalf of the owners of said ship and the said James, that he the said James should nominally be the master of said ship, and receive for wages fifty dollars per month and a privilege, (the amount of which privilege was and is stated in the shipping articles then and there executed, which this defendant has delivered as aforesaid to said E. Carrington & Co.) but that the said ship should nevertheless be navigated

and conducted in every respect under the direction and management of this defendant, and that his orders and instructions in regard to the courses of said ship, and all the navigation and conduct thereof should be implicitly thereafter taken and pursued by said James, and obeyed by every person on board said ship, to the same effect as if he, this defendant, still remained master thereof in name. And this defendant further states, that afterwards and during the whole time that said James acted as master of said ship, viz: from the time of entering into said contract at Gibraltar as aforesaid, until the said ship was condemned, and the said James and all the crew discharged in Guiaquill, in June, A. D. 1825, as aforesaid, this defendant had, in fact, the same management, care, responsibility, control, direction, and guidance of said ship and her navigation, and gave orders and executed himself therein in the same manner as previously to the time when said James so became nominally master thereof; and that the sole object and effect of said contract with said James was to retain and have for the owners of said ship the services which said James was competent and thoroughly qualified to render as first officer of said ship, and not to relieve this defendant from any care, duty, or responsibility, as master thereof.

This defendant further answering, says, that on the aforesaid voyage in said ship Mercury from Callao to Canton, he, this defendant, had on board said ship thirty-five hundred dollars ($3500) in specie, of his own individual property, which was placed and carried in the run in said ship's hold, in which place all the money of the owners of said ship was also at that and at all times stowed and carried; that at the time of taking his said money on board he made a memorandum of the same, and of the amount of the freight thereof in his private memorandum book, for the purpose and with the intent to exhibit the same in the final settlement of his accounts with said owners, in order that if they should think it right to charge him with the freight thereof, the amount might be known; but being his own money he did not carry it into the accounts with the owners of said ship; and believing that for the conveyance of his own private money to that amount, not interfering with the storage or freight of the ship in any respect, no freight would be charged him, he did not enter said sum in any account of goods taken on freight. And in respect to all the articles of his private property herein mentioned, as taken on board said ship Mercury, on his own account, without crediting the freight thereof in the account with the owners, he says that the said articles being of small bulk, occupying no room to the exclusion of other property or freight, and not affecting, at any time, the plan of the voyage, nor on any occasion delaying or tending to delay, alter, or affect the proceeding of said ship, or any object of the owners thereof, and being entirely at his own risk, he believed, at the time, that the owners taking into consideration the personal risks he had encountered and peculiar services he had rendered, would not charge him with freight therefor; but in order that they might have all the means of deciding properly on that point, he entered all said articles in the said private memorandum book at the times of their shipment, with the intent to exhibit them at the final settlement of his accounts, which memorandum book was lost in the explosion of said steam-boat.

And this defendant states, that said ship Mercury was not on any of said voyages full or fully laden with goods or freight, but had, at all times aforesaid, a great deal of spare and unoccupied room, to occupy which no freight offered, nor had he sufficient funds to fill it up. That the said sum of thirty-five hundred dollars put on board and carried in said ship Mercury as above

stated, on his own account, consisted principally of a loan made to him individually, for which he gave his own individual and sole obligation, and was solely responsible; and partly was derived from divers compensations and gratuities made to him personally, and for personal and individual services, some of which were of a confidential nature, which, in the troubled state of affairs in South America, it was in his power to render to several individuals of that country, and which were rendered by him after he had delivered the said first cargo of the said ship Mercury, while he was waiting from Sept. 1821, to June, 1822, for payment therefor from the government, and while he was unable to enter into any employment of said ship or property of said owners, and at times when he could not do any act, or perform any services to or for said owners under his said contract, and without incurring any responsibility whatever on their account. That upon chartering the said ship Superior as aforesaid, it was calculated and intended by him (under the supposition that said charter would be ratified by said owners of the Mercury,) that the goods and property which he should and did put on board said Superior for and on his own individual account, were to pay for the conveyance thereof their proportion of the sum contracted to be paid for the charter of said ship, and he credited the said owners with that proportion thereof accordingly. That the money on board said ship Superior, owned by Perkins & Co. as aforesaid, was the proceeds of their adventure from Canton in the ship Mercury; that by the contract with them on taking their goods from Canton in the Mercury, they were to pay as freight one-third of the net profits on the sales of their goods in South America, and to have their proportion of the proceeds of said goods returned or carried by this defendant to Canton, Europe, or the United States, to whichever he should go, free of freight, and therefore no freight was charged thereon; that no freight was charged on the money of said Talbot, and Russell & Co., and Forbes, the same being the proceeds of their adventure, and under similar contract with the foregoing. On the said money of Stanhope Prevost it was by this defendant and by Capt. Andrews, master of said Superior, deemed not proper to charge freight, in consequence of services the said Prevost had rendered the owners of said Mercury in their business in South America, and of future service which, from his situation and friendly disposition, he might render on the return of the Superior to that country; that for similar reasons no freight was charged to the said Lynch.

This defendant further answering, says, that in the course of his employment and transactions aforesaid until the termination of said second adventure by the condemnation and sale of said ship Mercury, he made several purchases, and did several acts which are hereinafter more particularly mentioned, believing that they would be attended with profit and advantage, and intending them, at the time, for the benefit and advantage of the said owners, if they should approve and ratify the same on advice thereof, which purchases and acts he was not by his said contract or instructions, or in anywise by said owners, either obliged or authorized to make and do for them; that in so doing he took upon himself, individually, the sole responsibility in case of loss; that he did believe, at the time of said acts, that the same would be approved and ratified by said owners, and taken to their own account and responsibility on advice thereof; that accordingly he did advise them seasonably thereof and request their approbation; that they did not, however, and have not to this day expressed to him in any mode their approbation and

ratification of such his acts and purchases, and that he has reason to believe, and does verily believe that in the event of loss in consequence of said acts and purchases the loss would have fallen on him alone, without any adoption of said acts or participation in such loss by said owners, and that it was intended by said owners, in such event, to leave the said acts and purchases unauthorized and unratified by them, and as and for the acts and purchases of this defendant for and upon his own individual account alone. And this defendant submits to this honorable court for their decision thereupon, and claims and insists that such have been the refusals and neglects of the said E. Carrington & Co., and the said Cyrus Butler to approve, adopt, and ratify in a reasonable time after advice and request, the acts and purchases of this defendant hereinafter more particularly mentioned, and made and done by him without obligation or authority as aforesaid, that they ought not now to be allowed to participate in the profits and advantages which have accrued therefrom, but all such profits and advantages ought to be decreed to belong to this defendant alone, and to be allowed to him accordingly in the account between him and them.

Whereupon more particularly answering, this defendant says, that when the said ship Mercury was first placed under his control and command in Europe as aforesaid, there was no sextant nor chronometer belonging to said ship, both of which instruments were necessary for the prosecution of a voyage round Cape Horn; and the said James who navigated said ship to Europe, informed this defendant that said Carrington and Butler had informed him that they should write to this defendant and request and authorize him to purchase a sextant on account of said owners of said ship; and this defendant was informed by masters of ships who had made the voyage round Cape Horn, that it would not be prudent for him to enter on said voyage without a good chronometer and an extra sextant, which was and is also the belief and opinion of this defendant. That although this defendant then and there owned and had a sextant which he intended to carry and did carry with him in said ship; yet he did not consider it prudent to go upon said voyage without another for the use of said ship, in case of accident to his own; that it is usual and customary for the owners of ships bound on such voyages, to furnish such instruments at their expense for the use of their ships; that thereupon this defendant purchased of Captain Solomon Townsend, on the fifteenth day of January, A. D. 1831, for and on account of the owners of said ship Mercury, a good and sufficient sextant, and a good and sufficient chronometer, for the sum of five hundred and ninety dollars, for which sum he drew a draft on the said owners in favor of the said Townsend, and advised them of said purchase, and of said draft therefor, which said draft was in due season by said Townsend presented to said owners for their acceptance; that the said owners nevertheless refused to accept the said draft, upon the ground that said purchase was unauthorized by them, and as such was considered by them solely for and on account of this defendant; that in consequence of said refusal the said Townsend caused the bank stocks and insurance stocks of this defendant in Providence to be attached in a suit commenced by him for payment of said draft; and another who had demands against this defendant, on hearing that his property was so attached, also commenced suit against him, and attached all his real and personal property; and the property, interest and credit of this defendant greatly suffered in said Providence in his absence in consequence of said refusal of said owners to accept and pay said draft.

That upon this defendant's share of the purchase of goods by him and the said Lynch and Clark in Lima in the year 1822, and shipped to Guiaquil in the brig Thetis as hereinbefore set forth, there accrued a clear profit of seventeen hundred dollars, which was credited to the said owners and received by said Jenckes for them and disposed of in manner as hereinbefore stated; of which purchase he duly advised said owners at the time, and about a month afterwards wrote to them again, viz. in a letter in May 1822, requesting to know whether they justified his said proceedings or not, of which letter they have acknowledged the receipt, but his said proceedings they never have ratified nor adopted, and the said profit this defendant has charged to them in the account contained on schedule hereto annexed and numbered (106,) which he prays may be taken as a part of this his answer; in which account this defendant has credited all moneys in which the said owners have an interest received by him *after* the commencement of this suit, viz. up to the time of swearing to this answer. That while in Lima in said year 1822, he joined with the said Lynch, and with M. Cartilla and Jean Jose Lanatia, in the purchase of the cargo of the prize ship Nancy, without any authority therefor from the said owners, in which purchase he employed none of the funds of the said owners, nor used nor in any manner gave or pledged their names or responsibility; that previously to the making of said purchase he had entertained the hope, inasmuch as said cargo of goods was to be disposed of under the direction, and for the benefit of the government, that he might obtain a portion thereof in part pay of the sum due from the government to said owners of the Mercury; but the government utterly refused to sell and to allow him to purchase the same on that account; and he thereupon, believing the purchase would be profitable, became concerned therein as aforesaid, which was made in the names of the said Lynch, Castilla and Laratia; that he duly advised said owners at the time of his said purchase, and afterwards in his said letter in May 1822, requesting them to write and state to him whether they justified his said proceedings or not, which proceedings they have never ratified and taken to their account; that upon the sales of said cargo so purchased there accrued to the share of the concern taken by this defendant a clear profit and gain of four thousand seven hundred and fifty-four dollars and fifty-cents, which sum made part of the specie shipped as aforesaid on said owners' account from Lima to Gibralter, and which this defendant has charged to them in the account on said schedule No. 106, hereto annexed and made part of this answer. That while at Valparaiso in May A. D. 1823, he conveyed on board said ship Mercury of the property of the owners of said ship, in dubloons, which as well as all specie were subject to an export duty of five per cent., money to the amount of twenty-eight thousand dollars, conveying the same on board in such small sums and numbers at a time as might be conveniently placed and disposed about the person; that by this he individually risked at every time, in case of discovery, the particular sum that might be found on him at the time of such discovery, which in such event being unauthorized by said Carrington & Co. & Butler, must have been his own loss; that they have never justified his said proceeding, and that said sum of money was thus by him exported free of export duty and the sum of fourteen hundred dollars was thereby saved. That afterwards at Mazattan in February A. D. 1825, he conveyed on board and exported of the property of said owners, twenty-eight thousand dollars in silver, subject to export duty of seven and a half per cent. in like manner and attended with like circumstances and risk, by which

there was saved the whole amount of the export duty thereon, viz. the sum of two thousand one hundred dollars, which sums amounting to thirty-five hundred dollars are stated in said schedule (106). That after the said new voyage and adventure mentioned and provided for in the said contract between this defendant and the said Edward Carrington & Co. & Cyrus Butler as set forth in said bill, was terminated and ended by the loss, condemnation and sale of said ship Mercury, and her appurtenances in manner as hereinbefore stated, this defendant did apply himself diligently to plan the proceeds and funds resulting from said adventure and remaining in his hands or under his control, in a situation most advantageous to the interest of all concerned, and such as he believed would be according to the wishes of said E. Carrington & Co. & Cyrus Butler. That with this view and with a view to a further adventure, undertaken upon his own responsibility and without any contract or authority therefor on the part of said Butler & Carrington & Co., he chartered in his own name three-fourths of said ship Superior as before stated, for the purpose of carrying to Canton the funds and proceeds resulting from said terminated adventure, and for the further purpose of prosecuting another adventure from Canton to America, in which other adventure, previous to chartering said ship and at the time thereof, he was willing that the said Carrington & Co. and the said Butler and himself should be jointly interested in the same proportions as in the adventure in said ship Mercury, if they should agree thereto; that accordingly he wrote to them two letters stating his views and expectations in that particular, and advising them of his intention to charter and of his having chartered said three-fourths of said ship Superior, one of which letters was written on the sixteenth day of August A. D. 1825, and the other on the sixteenth day of November A. D. 1825, and duly forwarded, copies of which are hereto annexed and marked (a,) (b). That he expected that on the receipt of said letters the said Carrington & Co. & Butler would, by a communication to his friends or agent and attorney to them known in Providence, or by a letter to himself express their ratification and adoption of his said act and their participation in said adventure, or otherwise it would remain at his this defendant's own risk, for profit or loss; that no communication to the abovementioned effect was made by said Carrington & Co. and Butler, nor did they ever express in terms to this defendant, either in writing or otherwise, that they approved, adopted, or ratified said act, or that they would be concerned in said new adventure or participate in the profit or loss thereon; that he received from them a letter on the subject of his said adventure in said ship Superior, whereof a copy is hereto annexed, and marked (d), which he received after the safe return of said ship with her cargo to South America, and was handed him there by Messrs. Alsop, Wetmore & Co., the date of which letter is July 10th, 1826.

But this defendant avers, that during his voyage and adventure in said ship Superior, and before the same was terminated, the said E. Carrington & Co. and Butler, did expressly disavow the same to his agent and attorney in Providence aforesaid, and as he verily believes to other persons also; that previous to his leaving said Providence for Europe, before the commencement of said first voyage in the Mercury, he, this defendant, made and delivered to and left with his wife his general power of attorney to act for him in his absence, by virtue whereof she did so act for him as his attorney and agent in his absence accordingly; all which was then and there known to said Carrington & Co. and Butler; that before leaving Providence

as aforesaid, it was agreed verbally by and between said Carrington & Co. and Butler and this defendant, that they should and would supply her on his account with money at such times as she should request the same, in sums that should be reasonable, from time to time, for necessaries, so long as he, this defendant, should continue to be abroad employed in the voyages, adventures, business, and concerns, in which they the said Carrington & Co. and Butler had or should have an interest; that accordingly during the whole time of the continuance of said voyages and adventures in the ship Mercury, and until the same were terminated by her sale, they did, from time to time, on the requests of his said wife, supply her with sums of money as aforesaid; that after they had received advice of said sale of said Mercury, and of this defendant's new adventure in said Superior, and of his having actually sailed in said ship Superior, viz. about the last of August, A. D. 1826, being before the return of said ship Superior to South America from Canton, and before this defendant's adventure therein was terminated, they the said Carrington & Co. and C. Butler were applied to by the wife of this defendant for a reasonable sum for necessaries as aforesaid, to which application the said Carrington & Co. immediately wrote and sent to her an answer, of which a copy is hereto annexed, and marked (e); that afterwards, the son of this defendant was sent by his said wife to the counting house of said E. Carrington & Co. for the same purpose, and to obtain an answer, and was then told by one of said Company, never to come there again for money for this defendant's account, as they should never advance any more. And about the same time, after, as this defendant believes a conference on the subject between said Carrington & Co. and the said Butler, this defendant believes that they unitedly wrote and sent a letter to his said wife stating in substance that the joint adventure and voyage of this defendant with them under their contract and agreement being terminated and ended, they should not any longer supply or advance to her money on his account, nor consider themselves bound so to do under said agreement to advance as aforesaid; which letter this defendant thinks and verily believes, that he after his return home, found in the possession of his said wife, signed by the said Carrington & Co. and Butler, but which he believes has since by some accident been lost or destroyed, and this defendant is therefore not able to give a copy thereof. And further, this defendant states that afterwards the said Carrington and Butler would not and did not advance or supply any more money to his said wife in manner as they had from time to time during the voyage and adventure of the Mercury done, though they were expressly thereto requested by his said wife, but did in terms and verbally, when requested, refuse so to do, on the ground, that the voyage and adventure carried on under their contract was ended, and that this defendant had gone off in another ship to Canton. Whereupon this defendant submits to this honorable court for their decision, and claims and insists that neither the said plaintiff nor the said Edward Carrington & Co. and Cyrus Butler are entitled to any portion of the profits and proceeds of said adventure of this defendant in said ship Superior, nor to ask for an account thereof from this defendant to them, in manner as in said bill claimed and asked; but on the contrary, are bound to account to this defendant for the amount thereof, which has all been received by them in manner as hereinbefore and in said annexed accounts mentioned, and ought to be charged therewith by this defendant, and to be decreed to repay the same to this defendant according to the statement in the account on the schedule hereto annexed, and numbered

(107), which he prays may be taken as a part of this answer. But if this honorable court should adjudge and decree that the said E. Carrington & Co. and the said Cyrus Butler were, and are entitled to participate in said adventure and profits, then this defendant insists and claims that he is entitled to a just, liberal, and equitable compensation for his services, perils, and personal responsibilities in and about said adventure, far beyond the amount of compensation stipulated in said contract for said former adventure; and prays the decree of this honorable court for an adequate sum to be allowed to him therefor accordingly.

And this defendant further answering says, that he never had or received any goods, wares, merchandise, moneys, or other property, belonging to the said owners of said ship Mercury, or in which they, or any of them, had any interest, for and on account of said voyages and adventures, or any of them, other than what is before specified. That during all the period aforesaid, he never proceeded with said ships, or either of them, to any ports or places other than as before stated. That he never took on board either of said ships any other passengers. That he never took any other freight on board of either of said ships. That he hath no further knowledge of any adventures on board of either of said ships, or of the costs, value, or particulars thereof. That he had not at any time on board of either of said ships on his private account any other goods, wares, merchandise, money, clothing, or other property of any kind, except what was contained in his private stateroom, and in his private chest and trunks which were in his private stateroom, and which did not exceed in number and size, those which a shipmaster or supercargo (not entitled to privilege) is accustomed to have for his personal accommodation; and in the contents of which the said Butler and Edward Carrington & Co. had no interest whatever. That he has never taken, retained, appropriated, or made use of any of the goods, wares, merchandise, moneys, bills, or other property of said owners of said ship Mercury, in any other way or manner than as above stated. That during the whole time he was prosecuting the voyages and adventures aforesaid, he, from time to time, and as often as was practicable, forwarded to the said Butler and Edward Carrington & Co. all proper and necessary accounts, vouchers, documents, and other information touching said voyages and adventures, and of all his proceedings in the premises; and very soon after his return to the United States as aforesaid, he delivered over to the said Edward Carrington & Co., for their information and accommodation, and for the information and accommodation of all persons interested, all other accounts, documents, and vouchers which he, this defendant, conceived would be useful or necessary to finish and complete a final settlement between all the parties concerned, and then, and often since, has offered to deliver to them, the said Butler and Edward Carrington & Co. any and all other such accounts, documents, vouchers, and information, as they might find necessary for a final settlement of all said concerns, and from the time last aforesaid, up to the exhibition of the bill of complaint aforesaid, he was ever ready, willing, and desirous, to come to a full, final, and equitable settlement, and account with the said Butler, Edward Carrington & Co., and all other persons (if any there be) who are interested, touching the premises aforesaid.

That he has often requested the said Butler and Edward Carrington & Co. to come to a full, final and equitable settlement, and account in the premises with him, this defendant, and to name and appoint a time convenient to them

therefor, which they under various pretences and excuses have neglected to do. That among the accounts, vouchers and other documents so by him forwarded and delivered to the said Butler and Edward Carrington & Co. were many original papers of which he, this defendant, hath no copy, transcript, note or memorandum, and without which he cannot make a more full answer and perfect defence to the bill of complaint aforesaid. That he forwarded and delivered all of said accounts, vouchers and documents to the said Butler, and Edward Carrington & Co. without taking any receipt therefor, under the full faith and confidence that they would return the same to him on request, and whenever it should be material for him to have possession of the same. That soon after the exhibition of said bill on complaint and at divers times since, he has requested the said Butler, and Edward Carrington & Co. to return and deliver to him, this defendant, said accounts, vouchers, and other documents which they and each of them have ever neglected and refused and still do refuse to do, the last of which said neglects and refusals is contained in a certain letter addressed by them the said Cyrus Butler, Edward Carrington and Samuel Wetmore to Philip Crapo, counsel for the defendant, bearing date on the twenty-sixth day of July, A.D. 1830, a copy whereof is hereunto annexed and numbered ( ) which he prays may be taken as a part of this his answer. That according to his best knowledge and belief, all the accounts which are herein referred to and which are hereunto annexed, are just and true and accurately stated; but he, this defendant, admits that errors may exist in said accounts which need to be corrected, but which he cannot correct in consequence of the detention aforesaid of his accounts, vouchers and documents aforesaid, which said errors (if any) he prays may be corrected by this honorable court. And this defendant avers, that he herewith produces and files in the office of the clerk of this honourable court, all the original books, accounts, papers, writings and letters of all goods, wares and merchandise, specie and other property, or which relates thereto, taken on board said ship Mercury on account of the owners thereof, or in which they have any right, title or interest; and also the original charter party of the ship Superior, Captain Andrews, together with all the original books, invoices, papers, letters, accounts, and writings which in any way or manner relate to any goods, wares, or merchandise, specie or property shipped on board ship Superior at said port of Lima or at any other place, for and on account of the owners of said ship Mercury, or in which they have any right, title or interest, which are in his possession or under his control.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without there is any other matter, cause or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answerd, avoided, traversed or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honourable court shall direct; and hereby prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

Signed HENRY MATHEWSON.
PHILIP CRAPO,
JOSEPH L. TILLINGHAST,
of counsel for defendant.

PROVIDENCE, *sc.*

In Providence this fourth day of September, A.D. eighteen hundred and thirty, sworn to before me,

WM. S. PATTON, Jus. Peace.

Joint answer of Cyrus Butler et al.

RHODE ISLAND DISTRICT, &c.

Circuit Court, June Term, A. D. 1830.

The joint and several answer of Cyrus Butler, Edward Carrington, and Samuel Wetmore, to the Bill of complaint of Willard W. Wetmore complaint against the said Cyrus Butler and others, defendants.

In Equity.

These defendants now and at all times hereafter reserving to themselves all and all manner of benefit of exceptions to the numerous defects contained in the complainant's bill of complaint, for answer thereto or to so much thereof as these defendants are advised are material for them to answer unto, they answer and say, and each for himself answers and says, that they admit that they, together with the said Henry Mathewson and the complainant were jointly interested as partners in the said ship Mercury, and in the several cargoes and property during the several periods and in the proportions set forth in the complainant's said bill of complaint, and that during the continuance of said copartnership, the said Henry Mathewson, as the consignee and agent of the copartners, had the charge, management and disposition of the funds and property of the said concern, and that he entered into and carried on large and extensive operations, and commercial negotiations with the funds and property, and on the credit of the said copartnership in various countries, ports and places, as in said bill is alleged, whereby great profits were made as these defendants believe.

And these defendants further say, that the said Henry Mathewson has made several remittances and rendered several accounts to his copartners, but these defendants do not believe that he has rendered just and true accounts of all the copartnership property and funds, which has come to his hands as aforesaid, or of the profits thereof, but they believe that a large amount of said copartnership funds and property, and the profits thereof, are still in the possession of said Henry Mathewson, of which he has never rendered any account to his said copartners.

And these defendants deny all manner of combination and confederacy wherewith they are unjustly charged in said bill. Without that, that there is any other matter or thing charged in said bill, and not herein and hereby admitted and avoided, traversed or denied, is true. All which matters and things by these defendants set forth in their said answer, they aver, and are ready to prove when and where this honorable court shall order and direct, and they pray to be hence dismissed with their reasonable costs in this behalf, so unjustly sustained.

CYRUS BUTLER,
ED. CARRINGTON,
SAMUEL WETMORE.

PROVIDENCE, *sc.*

In Providence, June 30, 1830, the above named Cyrus Butler, Edward

Carrington and Samuel Wetmore, made oath to the truth of the above statement, before me,

CHARLES F. TILLINGHAST.
Justice of the Peace.

Exceptions to answer of H. Mathewson.

RHODE ISLAND DISTRICT, *sc.*

Circuit Court, Nov. Term, 1830.

In the bill in equity WILLARD W. WETMORE,
vs.
HENRY MATHEWSON et al.

In Equity.

Exceptions taken to the answer of the said Henry Mathewson to the bill of complaint aforesaid.

Exceptions.

First. The said Henry has not exhibited and produced the original bills on account, or account of sales or account currents, nor copies thereof rendered to him by the agents, consignees or factors by him employed in the purchase and sale of the property and funds of the said concern, during the time he had the charge and management thereof, nor of the goods purchased in company with M. Clarke and E. Lynch, nor of the goods purchased in company with E. Lynch, nor of the original account of sales and settlement between the parties.

Second. The said Henry has not exhibited and produced any accounts of all sales, nor copies thereof, and all purchases of property and funds on board ships Mercury and Superior, other than the cargoes thereof, nor of the persons of whom the same was purchased, or to whom the same was sold, nor has he exhibited and produced any accounts of all moneys by him received, or of the bills of exchange and other property by him remitted to the United States or elsewhere during the time aforesaid, or of the money, bills of exchange, or other property brought by him to the United States on his return thereto after the period aforesaid, nor has he in his said answer stated to whom said property, funds, money, and bills of exchange belonged, or who were interested therein, and particularly as to the property and funds brought by him or in his name, or under his charge in the ship Portia in which he returned to the United States, nor what amount of money, or other funds, or property he has received from any person or persons since his return to the United States, connected with or arising from his said adventures and employment during the period aforesaid.

Third. The said Henry has not exhibited and produced any account of, nor stated in his answer the particulars of an adventure in his name, carried in said ship Mercury from Canton to South America; nor from whom the same was purchased, or to whom sold; nor of the accounts of said sales, nor who was interested therein; nor with what funds the said adventure was purchased.

Fourth. The said Henry has not exhibited and produced an account of, nor stated in his answer the particulars of an adventure in his name, carried in said ship Superior, from Canton to South America; nor from whom

purchased, or to whom sold; nor who were interested therein; nor from what funds the said adventure was purchased.

Fifth. The said Henry has not exhibited or produced any vouchers for moneys charged, as paid for the disbursements of said ship Mercury on the coast of Gibraltar, Brazil, Chili, Peru, China, Calafornia, Mazattan, Guayaquill, and other places where said ship touched or traded during the period aforesaid.

Sixth. The said Henry has not exhibited or produced an account of, nor stated in his answer the amount or value of the adventure stated by him, to be by him shipped on his own account, in said ship Mercury, from Canton to South America, nor of what articles the said adventure consisted of; nor of whom, or with what funds the same was purchased.

Seventh. The said Henry has not exhibited or produced an account of, nor stated in his answer from whom he received the sum of twenty thousand seven hundred seventy-five dollars and fifty cents, stated by him to be shipped as his own property, on board the ship Superior, in November, A. D. 1825; nor from what funds, property, or resources he obtained or acquired the same.

Eight. The said Henry has not exhibited or produced an account of, nor stated in his answer, whether he received any, or what amount of money he has received of Alsop, Wetmore & Co., since his return to the United States, or for what account the same was received, or from what funds or property the same was derived.

Ninth. The said Henry has not exhibited or produced an account of, nor stated in his answer what sum, or amount of money or other property, the said Cyrus B. Manchester brought with him to the United States, nor who was interested therein; nor whether the said Henry remitted any, or what amount of money or other property, by the said Cyrus B., to the United States.

Tenth. The said Henry has not exhibited or produced a particular account of, or stated in his answer from whom, or what property, funds or resources he received or derived the sum of thirty-five hundred dollars, and other property stated by him to be shipped on his own account in the said ship Mercury, at Calao, destined to Canton; nor from whom, or for what account he obtained the loan stated in his answer; nor the account of the gratuities and compensations stated to be made to him for personal services, nor has he stated what those services were.

Eleventh. The said Henry has not exhibited or produced an account of, nor stated in his answer what amount or value of money, funds or other property, he had in his said private state-room, private trunks, and private chests, or from what funds or resources the same was obtained or required; nor has he exhibited any account or statement of a certain speculation in flour, or other property entered into by him and E. Lynch, nor the extent or amount of the same, or whose funds or property was employed therein.

In all which particulars, the said complainant excepts the answer aforesaid, of said Henry, as imperfect, evasive, and insufficient; and therefore prays that the said deft. may put in a better and further answer to said bill of complaint.

NATH. SEARLE,
Solicitor and Comm'r for the Complainant.

Decree on foregoing Exceptions.

RHODE ISLAND DISTRICT, CIRCUIT COURT,
1st Monday in January, A. D. 1831.

WILLIAM W. WETMORE
vs.
HENRY MATHEWSON et al. } In Equity.

The exceptions taken by the said complainant to the answer of the said Henry Mathewson having been heard, and the answer thereto on behalf of the said defendant, the said court doth thereupon hereby order, adjudge, and decree, that the said first exception be disallowed.

Secondly. That so much of the 2d exception as requires the said Mathewson to answer further as to the money by him received, the bills of exchange, and other property by him remitted to the United States or elsewhere, during the time aforesaid, and the money, bills of exchange, or other property brought by him to the United States on his return thereto after the period aforesaid, and who were interested therein; and particularly, as to the property and funds brought by him, or in his name, or under his charge in the ship Portia, in which he returned to the United States; and what amount of money or other funds or property he has received from any persons since his return to the United States, connected with or arising from his said adventures and employments during the period aforesaid, be allowed, and that the residue of the said 2d exception be disallowed.

Thirdly. That the third of the said exceptions be, and the same is hereby allowed.

Fourthly. That the fourth of the said exceptions be, and the same is hereby disallowed; the subject matter thereof being embraced and more truly expressed in the sixth exception.

Fifthly. That the fifth of the said exceptions be, and the same is hereby disallowed.

Sixthly. That so much of the sixth of said exceptions as requires the said Mathewson to state of whom and with what funds the said adventure was purchased, be and the same is hereby allowed, and the residue thereof disallowed.

Seventhly. That the seventh of the said exceptions be, and the same is hereby allowed.

Eighthly. That the eighth of the said exceptions be, and the same is hereby disallowed, as being unnecessary, the same having been included in the general terms of the last clause of the second exception, and there being nothing in the bill charging the said defendant with having received since his return to the said United States any money from Alsop, Wetmore & Co., in particular, nor any thing in the answer rendering this exception necessary after the general terms of the second exception as aforesaid.

Ninthly. That so much of the ninth of said exceptions as requires the said Mathewson to answer whether he remitted any or what amount of money or other property by the said Cyrus B. Manchester, to the United States, be, and the same is hereby allowed, and the residue of the said exception disallowed, as not supported by the bill or by the disclosures of the answer.

Tenthly. That so much of the *tenth* of the said exceptions as relates to the thirty-five hundred dollars therein mentioned, be, and the same is here-

by allowed, and disallowed so far as it relates to *"other property,"* the answer not stating that any *"other property"* was shipped on the said Mathewson's own account in the said ship Mercury at Calao, destined to Canton as is stated and supposed in the said exception.

Eleventhly. That so much of the eleventh of the said exceptions as requires a further answer as to what amount or value of money, funds, or other property the said Mathewson had in his said private state room, private trunks, and private chests, and from what funds and resources the same was obtained or acquired, be, and the same is hereby allowed, and the residue of the said exception disallowed, as not supported by the bill or the disclosures of the answer.

And it is further ordered that the said defendant on or before the rule day in February next, put in and file a further and perfect answer to the said bill in relation to those particulars which are stated in so much of the said exceptions as are allowed as aforesaid.

And it is further ordered that the said Henry Mathewson pay to the said complainant his costs of the exceptions so taken by the said complainant to the said answer and allowed as aforesaid, and of the subsequent proceedings thereupon, and that the complainant have execution thereof.

Let the above be entered in the rule book as the order of the court in the above cause in reference to the said exceptions.

JOHN PITMAN, District Judge U. S.
for Rhode Island District.

Further Answer of Henry Mathewson.

The further answer of Henry Mathewson, one of the defendants to the bill of complaint of Willard W. Wetmore against said Mathewson and others.

This defendant saving and reserving to himself as in and by his former answer he hath saved and reserved, for further answer to the said complainant's bill of complaint aforesaid, or to so much thereof as he is advised is necessary or material for him to make answer unto, answering saith: that while in Bremen in the year 1821, as stated in his former answer, this def't had of his own property some articles of clothing, consisting of baize shirts, duck trowsers, boots and shoes, and similar articles, part of which had been by him in former voyages purchased for sale, and part were made for his own men, all of which he had caused to be conveyed from the United States to Bremen, and from thence the same were by him carried in his private trunk with his other clothing in said ship Mercury to Lima, where he sold the same on his own account to different sailors, whose names or any of them he does not remember, and received therefor in different sums the amount of one hundred dollars, according to the best of his recollection. That while in Bremen as aforesaid he received, through the hands of Mr. Frederick Delius, as a present from the German merchant from whom 3000 of the said sales has been purchased, but whose name he is not now able to recall, the box containing twelve small swords mentioned in his former answer, which were old swords that had been newly cleaned, and the value whereof in said Bremen did not exceed, for the whole, fifteen rix dollars, which he sold in Lima, through the agency of Estanisloa Lynch, to a Mr. Fraunt, a Swede, for the sum of two hundred dollars, as nearly as he can

remember. That he also carried in his private trunk in said ship Mercury from said Bremen to Lima, the amount in guineas, as nearly as could be made in guineas, of the said gratuity of four hundred and sixty-three rix dollars and forty-six pence, mentioned in his former answer as credited to him by said F. & E. Delius, the amount thereof being about $360 in money of the United States. That other than as aforesaid, and his ordinary wearing apparel, instruments, books, charts, papers and other articles of convenience and not of merchandise, he carried no property in his private trunk, chest, or state-room, on his own private account, in said Mercury on her voyage from Bremen to Lima, according to his best recollection and belief.

That while at Lima in 1821 and 1822, where he was delayed for about nine months waiting for pay for the cargo of said ship, as mentioned in his former answer, he became extensively acquainted with Spaniards and their families, and was at different times by several of them applied to on behalf of themselves and their friends, to aid in concealing their money so as to prevent the loss to which it was exposed in the troubled state of the country; and for assistance occasionally rendered by him in that behalf, he received from Don Pedro Fernandez, Don Jose Pablino, Donna Juanita Pablino, and others their friends, whose names he does not recollect, divers sums of money, pieces of silver plate, and other articles, as presents and remunerations; all which amounted to one thousand dollars, according to his best recollection and belief—that the said persons were at that time at Lima, but where they now are he does not know. And he further states that said assistance was rendered by him as stated in his former answer, at times when he was not and could not be employed in any business, or for the advantage of said owners. That while at Lima as aforesaid he also received of the said J. S. Martines, the said sum of two thousand seven hundred dollars, mentioned in his former answer, for which he gave his individual receipt in manner as in said answer stated, which several sums and property in this further answer stated to have been by him received, excepting some small portion thereof expended in personal expenses, he, this def't, after chartering said ship Mercury to said Rodolpho, as mentioned in his former answer, took on board said ship at Lima for Rio de Janeiro and Gibraltar, carrying the same in his private trunk, and chest and state-room. That after arriving at said Rio de Janeiro his said private funds were increased by about $250, received from different passengers, in different sums, for taking care of their money, as in his former answer already stated. That at Rio, while said ship was under charter as aforesaid, this def't, with Benjamin James, first mate, and George Wheaton, second mate of said ship, purchased a quantity of sugar and coffee, amounting to about $ the whole being less in quantity than would fill the privileges of said mates. That this def't afterwards, at the request of said Wheaton, took to his own account the share of the said Wheaton, whereupon this def't and said James became the only owners of said coffee and sugar, and this def't's share thereof was by him paid for out of his private funds aforesaid, as were also a small quantity of clothing and divers personal expenses. That the said sugar and coffee was carried in said ship to Gibraltar, and there disposed of, and by the sale thereof at Gibraltar this def't made and received a profit of one hundred dollars on his share, which, with the one hundred and fifty dollars received from said passengers, mentioned in his former answer, he there added to his said private funds. That at Gibraltar he also received three

hundred dollars of James Andrews on loan, for which he gave said Andrews his individual promissory note.

That on his return from Gibraltar to Lima in 1823, he received from Estanisloa Lynch seven hundred dollars on account of his individual interest in a quantity of flour which had been disposed of in his absence, in which the owners of said ship had never any concern, and in the purchase of which none of the funds, credit or interest of said owners, were ever in any wise employed or resorted to, or in any wise concerned: the said Lynch having therebefore remitted to the wife of this defendant two thousand dollars on the same account. That at said Lima, in November 1823, he drew in a pawn-lottery, a prize consisting of silver dishes and other articles, all of the value of about nine hundred dollars, as the same were afterwards sold in Canton: that while at Lima at the time last named, he received on his own account, on loan, from Don Pablo Haker, three thousand dollars in cash, for which he gave his individual promissory note on interest. Furthermore this def't answering says, that before his said return to Lima, and while at Gibraltar as aforesaid, he purchased in his own name, but for said Martinez, and with part of the money received as aforesaid from said Martinez, military clothing and other articles, as mentioned in his former answer, amounting to about $1000; and leaving about seventeen hundred dollars of the money of said Martinez uninvested, instead of the said sum of about eighteen hundred dollars, stated in said former answer, which statement is, on further examination, found to be so far erroneous by mistake—a part of which articles, amounting at least to $304, was carried in said ship to Lima in this def't's private trunk, with the unexpended money of said Martinez and this def't's private funds. That on returning to Lima as aforesaid, not finding the said Martinez there, and having been requested by said Martinez, in such case, to dispose of his goods, except some small articles, intended by him for presents to a lady, and hold the proceeds for his order: this def't did accordingly, after delivering said presents, sell the rest of said clothing and articles to the Peruvian government, and received therefor their bill on their agent in London for $2300, or nearly that sum; which bill this def't then remitted from Lima to Thomas Dickason & Co. London, with instructions to place the same to the credit and amount of this defendant, where collected.

That in said ship Mercury, in her voyage from Callao to Canton, mentioned in his former answer, he carried of his individual property the following separate sums and parcels, and in manner following, viz:

The said thirty-five hundred dollars in specie in the ship's run, where was also the said owner's money, as in his former answer mentioned, - - - - - -	$8500
Twenty-four hundred dollars in Spanish gold and English guineas, in his private trunk, between the two bottoms thereof, -	2400
The said prize of old silver, &c., valued at $900, in his private state-room and under his berth, - - - -	900
Four hundred dollars in his private trunk, in dollars, - -	400
Amounting to - - - - - - -	$7200

All of which was derived from the sources and receipts hereinbefore particularly specified and related.

That at Canton in the spring of 1824, he invested his said funds in goods as follows, viz:

Goods purchased for him by Samuel Russell indiscriminately, and of the same descriptions, and at the same times with those purchased by said Samuel Russell for the said owners of said ship, and consisting of crape shawls, silk handkerchiefs, crape dresses, rice boxes, hats, ribbons, &c., amounting to about $3,900, on which said Russell charged this defendant full commissions,	$3,900
Goods which this def't at times of leisure, in order to save commissions, personally purchased at various shops for cash, in various lots or pieces, consisting of silk coats and pantaloons, a few grass shirts, jackets and pantaloons, some embroidered crape shawls, from $7 to $50 each, embroidered dresses, shell combs, satin dresses, &c., which were of similar description with goods of the cargo, and cost about - - - -	2,550
2000 strings of small beads, cost - - - -	750
That he also took there of Euquong, on his individual credit, fifteen shawls, at $9 apiece, - - - - -	135
And received presents of shell combs, handkerchiefs, dresses, shawls, china ware and tea, from various Chinese traders, according to their usages, of the value altogether of about -	200
Making in the whole - - - - -	$7,535

That of the goods so purchased by him, he took no bills at the time, the same being paid for in cash at the time, and bought wherever he could obtain them at the cheapest rate and at various prices, but when taken on board he made a particular invoice of all that he had personally purchased, and the said Russell delivered him an invoice of the goods so purchased by said Russell, which invoices were lost in the explosion of the steam-boat mentioned in his former answer, and he is not able to give a more particular account of said goods: that among the venders from whom the said goods were purchased, were Hin-schong, Eu-quong, More-schong, Scheon-schong, as he understands their names, and he does not recollect the names of others of whom he purchased; but he purchased as aforesaid of many others, of many of whom he never knew, nor inquired the names. That a part of said goods, making three tons, were carried by him as freight in said Mercury to South America, as mentioned in his former answer, and the residue being light and not bulky, he carried in said ship to South America in his private trunks, some of them between the two bottoms thereof. That he sold his said goods at Monterry, Mazatlan, Guaiaquil and Lima, at the same places and at the same rates as he disposed of the similar articles of the general cargo; that he cannot particularly remember and name the persons to whom his own goods in particular were sold, inasmuch as his private account-book, in which the names of the principal purchasers thereof were entered, was lost in the explosion of said steam boat; but the names of many of those who purchased his said goods, are contained in his book of daily sales, which is amongst the books and papers by him produced and filed with his former answer in the office of the clerk of this court. That his said goods were sold in different parcels to different purchasers, and for cash in hand, as were the goods of said cargo. That having once, as he supposed, sold said beads,

they were returned upon his hands, and he sold them subsequently to another purchaser for one thousand dollars; that the whole of the money for which he sold his said goods, including said beads, amounting, to the best of his belief and recollection, to twelve thousand six hundred dollars; in which said goods so as aforesaid purchased for himself and disposed of, he was himself solely interested as owner, and no other person; having derived the funds for the purchase thereof in manner hereinbefore stated. That while he was at Mazatlan in February, 1825, he was enabled, from his acquaintance and friendly terms with the officers of the customs, to procure favorable terms for transporting specie from the shore without payment of full duties, and to be of personal service in that manner to others, who in several instances remunerated him therefor; that he there derived from that source in all, twelve hundred dollars; having received such remuneration and gratification from several persons, whose names he cannot now state, but one of them he remembers was master of an English brig from London, and was called Capt. Bacannah, which he believes to be his name.

That at said Mazatlan and other places on the west coast of South America, the goods which had been sent as freight in said ship Mercury by Perkins & Co., Samuel B. Russell, Thomas T. Forbes, and Charles N. Talbot, as in his former answer mentioned, were disposed of; that upon the disposition thereof, the net amount realized by this def't, for his individual commissions at the rate agreed with them, and over and above the compensations, commissions and charges by him paid out to merchants and agents employed in the sales and disposition of said goods, was about eight hundred dollars, they having agreed to allow him five per cent. personally, for his personal attention to the sales of said goods.

That at said Mazatlan in 1825, he received of Cyrus B. Manchester, three hundred dollars in payment of that sum, which had been loaned to him by this defendant in the year 1823.

That in Guaiaquil, in June 1825, he received to be remitted to the wife of David Swaney, deceased, about four hundred dollars, being the amount of the personal estate, rights and credits of said Swaney, which the said Swaney before his death requested this def't to take into his hands individually and remit to his said wife, and which this defendant engaged to do accordingly.

That at said Guaiaquil, in September, A. D. 1825, he received two hundred dollars from Juanita Pablino, for purchasing for her $5000 in specie dollars of Capt. David Proudfoot—and at the same place he received five hundred dollars from Don Pedro Fernandez, for assisting him to embark his money for Paita.

That at Lima, in November, A. D. 1825, he received of Don Jose Pablino, five thousand dollars ($5000) on loan, for which he gave his individual promissory note, payable on demand, for $5050, with interest at five per cent. That he then and there also received of Don Pedro Fernandez, one thousand five hundred dollars ($1500) on loan, for which he gave his individual promissory note, payable on demand, with interest at five per cent., the said loans, and all others to him herein mentioned, being to this defendant on his own sole individual account.

That of the foregoing funds, derived from sources and made up of the sums so as aforesaid specified and detailed, he shipped on board the ship Superior, the sum of twenty thousand seven hundred and seventy-five dollars and fifty cents (20,775 50-100) in November, A. D. 1825, as mentioned

in his former answer, which sum was his own individual property, no other person being interested therein, and derived from the sources aforesaid. And also carried in said ship to Canton, in his private trunk, six hundred dollars in gold and silver, his own property, and derived as aforesaid.

That at Canton in the year 1826, he purchased the goods and merchandise specified in the invoice annexed to his former answer, numbered (78), and amounting to $20,400 92-100, which he paid for out of his said funds, and also received divers other goods, as presents, of the value of about five hundred dollars, some of which are noted at the foot of said invoice, and the residue he is not able to specify, otherwise than that they consisted of shawls, pieces of crape, lace dresses, embroidered dresses and other light articles which were contained in his private trunks, and some boxes of tea, he having no invoice or other means of making a more particular account thereof, than as herein and herewith exhibited. That the goods bought with his said funds and also those purchased for all the cargo of the ship, were bought in various lots for cash, and of many different persons, of whom were: Man-Hop, Ton Chin, Hin-Schon, Tscheon-Schong, Eu-Quong, More Schong, Tsche-Qua, and the names of any of the others from whom he purchased he cannot recollect. That the residue of his money carried to Canton, and not invested, he expended there, paying therefrom insurance amounting to between $300 and $400, also his debt aforesaid to Eu-Quong, and interest and other individual expenses; that his said goods purchased with his said funds, and those received as presents as aforesaid were carried in said ship Superior to South America, such of them as were not contained in said invoice, being carried in his private trunks, except said boxes of tea; and all his said goods were sold in Valparaiso and Lima, some of them however, not being sold until after his return to the United States. That the sales of such of them as were sold at Lima, the persons to whom sold, and at what prices appear by the account of sales signed Alsop and Wetmore, a copy whereof is hereto annnexed and marked (W), the net amount of which sales was $35,796 6½-100 reals, that of those sold at Valparaiso he delivered the accounts of sales to the said Edward Carrington & Co., with the other papers and documents delivered to them as mentioned in his former answer, and not having said amount by him, is not now able to state the sales, prices, amount, and persons to whom the same were sold, but thinks and believes the amonnt of said sales was about $5000.

That at said Valparaiso and at Lima he received on account of the sales of his said goods, over thirty thousand dollars; that at Coquimbo, in March, A. D. 1827, he received of Don Pedro Fernandez on loan, for which he gave his individual promissory note, and for his sole account, two thousand five hundred dollars. And also received of the same Fernandez, to invest for him in copper, three thousand five hundred dollars, for which he gave him his individual receipt, and did afterwards invest the same in copper, which was part of the copper brought in the Portia as hereinafter mentioned.

And further answering, this defendant says, that in December, A. D. 1822, he remitted from Gibraltar to his wife in Providence, by Captain Rhodes, master of the brig Washington, five hundred dollars, being of money then earned and due to him for his wages, and a silver basin and silver teapot, being of the articles before received by him in South America as hereinbefore stated, being of the value of about forty dollars.

That his next remittance was that hereinbefore mentioned from Lima to

Thomas Dickason & Co. London, of the said bill of exchange received of the Peruvian Government on account of sales of said Martinez's goods.

That in June, 1825, he remitted to his wife in Providence from Guiaquil, by Cyrus B. Manchester, one thousand dollars in specie of his own property, and on his own account and risk.

That in May, 1826, while at Canton, he sent by Captain Daniel S. Cooke, to his wife in Providence, a small trunk containing small articles of dress of the value of about ninety dollars, being presents, and his own property.

That in December, A. D. 1826, he remitted from Lima by Captain Andrews, in the said ship Superior, to his wife in Providence, one thousand dollars in specie; also a silver tea set of the value of about two hundred and fifty dollars; both being his own property and on his own account and risk.

That the foregoing are all the remittances of money or property or bills of exchange, or of any description made by him during his employment in his voyages and the said period, by the hands of the said Cyrus B. Manchester or any other person whatever.

That on his return to the United States as mentioned in his former answer, he brought with him the following property in the said ship Portia, besides the said sum of thirty thousand dollars, and said copper shipped in said ship to said Butler & E. Carrington & Co., as mentioned in his former answer, viz:

A bill or set of exchange drawn upon Ira H. Allen Esq., which this defendant had received of Herman Allen Esq., for the sum of fifteen hundred dollars, is - - - -	$ 1500 00
Seven boxes and one bag of specie containing in all twenty thousand six hundred and fifty-two dollars, is - -	20652 00
1063 marks 6 oz. of pina, which cost ten thousand one hundred and fourteen dollars and sixty two cents, is - -	10114 62
A quantity of copper of the value of five thousand six hundred and ninety dollars, in which said Fernandez was interested to the amount of said $3500 - - - -	5690 00
	$37956 62

Making in the whole the sum of thirty-seven thousand nine hundred and fifty six dollars and sixty-two cents, all of which he took on board and brought upon his own account and risk, except the interest of said Fernandez in said part of said copper to the amount of three thousand five hundred dollars; which said amount brought in the Portia on his own account, was derived from the sources aforesaid, and from and of the commissions, wages and shares belonging to him and under said agreement, and much less, as he believes, than his present due from said other parties to said bill.

That since his return to the United States, viz. in June, A. D. 1828, he received from said Alsop, Wetmore & Co., a quantity of pina and specie, brought by Captain Hurd in the ship Potosi, amounting to nine thousand one hundred and twenty-nine dollars, ($9129.) And in the spring of 1830, he also received from the same house two bags of specie brought by Captain Tripp in the ship Florida, and amounting to one thousand six hundred and twelve dollars, ($1612,) which said last named sums were proceeds of his said property and received for and on his own individual account as of his own private funds, except the sum of seven hundred and seventy-seven

dollars, ($777) part and parcel of said last named sum of $1612, which said $777, was derived from the sales of part of the Mercury's cargo, by Bartlett and Swett, and was and is therefore credited by this defendant to the owners of said Mercury in the account annexed to his former answer and marked (106.) That the said sum of thirty thousand dollars, and said copper shipped in said ship Portia, to said Butler & E. Carrington & Co., as mentioned in his former answer, was by them received on the arrival of said ship in New York, in which property they and this defendant were and are jointly interested.

That since his return to the United States as aforesaid, he has received no other money, funds, or property connected with, or arising from his said adventures and employments during the period aforesaid, from any person or persons whatever, that he knows of or remembers, other than as he has stated and set forth in this and his former answer. That during his said voyages, adventures, and employments in said ships, and during said period, he had and received no other property, money, or funds, connected therewith, or in anywise arising therefrom, whether of his private funds or those of said owners, or of other persons that he knows of or remembers, other than as he has stated and set forth in this and his former answer. That during the said period he remitted no other property than as in this and his former answer stated. That during said period, he carried in his private trunk and state-room such money of his said private funds as remained on hand uninvested and unexpended from place to place, except such as in this or his former answer is stated to have been otherwise carried. And other than is herein and in his former answer stated, and excepting his wearing apparel and instruments, private books, charts, and papers, and articles for personal convenience, he carried in his said private trunks, chests, and state-room no other property that he knows of or remembers. All which, &c. Without that, &c. &c. ; and thereupon this defendant prays as in his former answer he has prayed, &c.

HENRY MATHEWSON.
PHILIP CRAPO,
J. L. FILLINGHAST,
Of Counsel for Defendant H. Mathewson.

Providence, February 5th, 1831. Personally appeared the above named Henry Mathewson, and made oath to the truth of the matters and statements contained in the foregoing answer by him subscribed.

Before me ROBERT KNIGHT,
Justice of the Peace.

(W) (Copy.)

Sales of sundries ex-ship Superior from Canton for account and risk of Henry Mathewson, Esq.

1826.		2 22 22		
Nov. 2	Ablonto 7 m.	[m] 27 a 34	11 cases of dresses, 557, $12 -	$6,624 0
		21 22	2 scarfs, 90 a 10 -	900 0
		3 a 6	4 Sarga de Manto -	3,250 0
		7 a 13	7 X barred handkfs, 175 p's a $18 -	3,150 0
		14 a 15	2 black silk do 50 13 -	650 0
		56 a 69	14 crape shawls, 1370 5 -	6,850 0
		18 a 19	2 sarsnets, 1633½ a 7 1,429 1 -	
			Deduct for damage 171 4 -	1,257 5
4	Cirio 4 m.	43 a 52	10 Saya Saya, 250 p's a $17 4½ -	4,398 3½
19	Garcia	X	1 shawls 24 12 -	288 0
	Larrainzar	D 2	1 servantines 10 25 -	250 0
	Rounon	12	1 shawls 24 25 -	600 0
20	Larrainzar	[M] 88 103	2 combs 98 9 -	882 0
	Ygarza	105 106	2 small do 960 4 doz. 2 -	200 0
	Ex Helmes	95 96 98	3 billiard balls, 300 a 2 4 -	750 0
21	Coelor	5 6	2 pictures on board, 20 4 -	80 0
24	Rodriega & Co	[F] [P] 6 10	shawls, 7 18 -	126 0
	Young		1 pair sofas on board - -	75 0
	Reyna		2 cases kites - - -	35 5
	Mejia		1 whistles - - -	15 0
Dec'r 1	Junk		12 boxes China tea setts a $14 -	168 0
	Cady & Co.		132 silver chains - - -	1,188 0
	Monterola		2 pieces satins, 33 yards - -	57 0
	Mesa		3 dozen handkerchiefs, $10 -	30 0
20	Burrough		2 tubs candy, 79½ lbs a 2 rls -	19 7
	Urturga		8 bonnets, a $4 4 - -	36 0
	Xara	[M] 73	1 case fancy ribbons - -	191 3
28	Castilla	1	1 handkerchiefs, 25 doz. $20 -	500 0
30	Retailed	Sundries	Shawls, scarfs, &c. $680 - -	
			4 bed spreads, 450 - -	
			28 combs, 306 - -	1,436 0
1827.				
Jan'y 12	Cambos		22 small combs - - -	8 2
Feb'y 1	Sundries		Dresses, mecheros, hats, &c. -	90 0
4	Mayo		8 dresses - - - -	96 0
			2 pieces satins - - -	70 7
Mar. 18	Newman		2 matrasses - - -	13 0
April 27	Sundries	107 108	2 cases billiard balls, 200 doz. $2 -	400 0
	Do		Dresses, scarfs, &c. - -	25 0
May 2	Garcia	[M] 52	1 case shawls, 44 dozen, $20 -	880 0
	Sundries		2 beaureaux and 1 bedstead -	131 0
6	Mayo	55	2 cases dresses, 100 dozen -	1,110 0
Aug. 11	Valdera N. O.	[M] 53	1 case shawls, 50 dozen, $14 -	700 0
	Sundries		1 desk and dressing case - -	52 0
	Gusman		20 pair Concan pantaloons -	87 0
			24 jackets - -	75 0
			42 nankin pantaloons - -	63 0
			48 velvet vests - - -	180 0
	Sundries		8 do - - -	35 0
			28 chests tea, a $30 - -	840 0
1828.				
Sept'r	Cash	[M] 91 a 94		
		76 78 79 90		
		100	9 casks flowers, for - -	174 6
	Sundries		9 chests black tea - -	82 0
			6 trunks - - - -	50 0
1829.				
	Cash		1 dining sett - - -	40 0

Sales of Sundries, &c.—Continued.

1829.				
March	At auction		1 table, 12 chairs, 1 sofa	$79 3
			8 pictures, 1 box flowers	57 6
			32 jackets and pantaloons	72 0
			8 cases bands, pictures, (all broken)	8 0
			12 bonnets, 6 pieces Concan, and 1 piece tafetan	83 0
			8 jars sweetmeats, 1 bed, trunk, 6 boxes tea	60 0
July 20	Alsop Wetmore and Cryder		Shawls, scarfs, bed spreads, handkerchiefs, &c.	209 4
			8 cases black silk ribbons, for net	825 5
				$40,666 6½

Charges.

Landing, cartage to Lima, &c.	$158 3	
Cartage from customhouse to storehouse and labor	9 4	
Duties as per account rendered	4,171 4	
Gratification and stamp paper	65 0	
Expenses on goods transhipped	71 1	
Do on 8 cases black ribbons	116 4½	
Peonage of sundry articles to auction	2 0	
Port agency ½ per cent. on $39,841 1½	199 1½	
Storage 1 per cent. $7,679 6	76 6	4,870 0
		$35,796 6½

E. & O. E.

Signed ALSOP, WETMORE & CO.

Expenses on 8 cases black silk ribbons. Lima, July 31st, 1829.

Customhouse storage and labor	$68 0
Cartage to Callao, shipping, &c.	8 0½
Sealed paper, 4 lbs, duties 2 per cent.	40 4
	$116 4½

Replication.

WETMORE *vs.* MATHEWSON, &c.

The replication of Willard W. Wetmore, comp't., to the answer of Henry Mathewson, &c., respondent.

This repliant, saving to himself all manner of advantage of exception which may be had and taken to the numerous errors and insufficiences of the several answers of the said defts., for replication thereto says, that he avers, and will aver, maintain, and prove, his said bill to be true, certain, and sufficient in the law, to be answered unto by said defendants, and that the answers aforesaid are very uncertain, evasive and insufficient in the law, to be replied unto by this repliant, without that, that any other matter or thing in said answer, contained material or effectual to be replied unto, and herein, and hereby, well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things, this repliant is

ready to aver and prove, as this hon. court shall direct, and humbly prays, as in and by his said bill, he has already prayed,

By his solicitor and counsel,

N. SEARLE.

Interlocutory Decree.

RHODE ISLAND DISTRICT, sc.
Circuit Court, Nov. Term, 1831.

In the cause
WILLARD W. WETMORE, Comp't., } In Chancery.
vs.
HENRY MATHEWSON et al. Def'ts. }

This cause came on to be heard, and was argued by counsel, and on consideration thereof, and by agreement of the parties, it is ordered, adjudged, and decreed by the court, that said cause be referred to the Hon. Samuel Eddy, of Providence, as a master in chancery, to take and state an account between the comp't, and the def't, Henry Mathewson, touching and concerning the concerns and business of the partnership subsisting between the parties in said cause, and all the other matters and things charged in said bill of complaint.

That the said master have power to examine witnesses, and all the parties in this cause, under oath, touching all and singular the matters above mentioned; and that he also have power to compel the production of such books, papers, and documents or other writings, as may be in the possession or power of either of the parties, as shall be called for, or as he shall think ought to be produced before him, in taking such accounts; and that he be at liberty to adjourn from day to day upon said reference. And it is further ordered, that all further direction be reserved until the coming in of said master's report.

JOHN PITMAN, Dist. Judge.

November 23d, 1831.
Attest B. COWELL, Clerk.
Nov. Term, 1831.

On the foregoing decree, a commission issued to the Hon. Samuel Eddy, appointing him master as aforesaid; and afterwards a commission issued appointing Samuel Eddy, Richard K. Randolph, and John H. Ormsbee, masters in said case, and various proceedings were had before said masters, when the following bill of revivor was filed in the clerk's office of said circuit court.

June 13 1834.

Bill of Revivor.

JOHN H. CLARKE, Complainant, }
vs.
HENRY MATHEWSON & others, Respondents. }

To the honorable Circuit Court of the United States, for the District of Rhode Island, sitting in Chancery.

Respectfully showeth unto your honors, your orator John H. Clarke, of

the city of Providence in said Rhode Island district, manufacturer, and a citizen of the State of Rhode Island and Providence Plantations: That Willard W. Wetmore, late of the city of New Haven, in the Connecticut district, merchant, and a citizen of the State of Connecticut, but now deceased, on or about the twenty-second day of February, A. D. 1830, filed his original bill of complaint in the clerk's office of this hon. court, against Henry Mathewson, master-mariner, Cyrus Butler, merchant, Edward Carrington and Samuel Wetmore, merchants, all of the city of Providence, in said Rhode Island district, and all citizens of the State of Rhode Island and Providence Plantations, as the defendants thereto, thereby stating such several matters and things as are therein for that purpose more particularly set forth, and praying that the said defendants might answer the several matters and things in said original bill set forth, and come to a full, fair, and perfect account with the said Willard W. Wetmore, then in full life; and that whatever sums of money might be found due to the said Willard W. from the said defendants, or either of them, on such account, might be ordered to be paid to said Willard W., or grant him such other and further relief in the premises, as to this hon. court might seem just and proper, and agreeable to the rules and principles of equity.

And your orator further showeth, that said defendants were duly served with process from this hon. court, to appear and answer said bill, and said defendants did appear and file their answers to said bill accordingly. And the plaintiff having filed exceptions to the answer of said Henry Mathewson, he appeared in pursuance of the order of this hon. court, made in the premises, and filed a further answer to said bill: to which answer, and the answers of the other defendants, the said Willard W. replied, and thereupon issue was joined; all which will more fully and at large appear by said original bill, the answers thereto, and the replications, and other proceedings now remaining as of record in this hon. court, and to which your orator begs leave to refer. That at the November term, A. D. 1831, of this hon. court, it was ordered by a decree of said court, by consent of parties, that said cause be referred to the Hon. Samuel Eddy, as a master in chancery, to take and state an account between the said Willard W., the then complainant, and the defendant the said Henry Mathewson, touching and concerning the concern and business of the copartnership subsisting between the parties in said cause, and all the other matters and things charged in said bill of complaint. It was also further ordered, as in and by said decree is more fully stated and set forth; and your orator showeth at the June term, A. D. 1832, of this hon. court; it was further ordered and decreed by consent of parties, that Richard K. Randolph and John H. Ormsbee be joined to the said Samuel Eddy, as masters under the decree aforesaid, in the cause aforesaid, as will more fully appear from said order and decree now remaining as of record in this hon. court. That the said Willard W., complainant, as aforesaid, and the said Mathewson, defendant, as aforesaid, appeared before said masters, to whom said cause stands referred, and some proceedings were had before said masters, but no general report has yet been made in said cause; and that the said Willard W., the complainant, lately, on or about the day of A. D. 1834, departed this life intestate, leaving rights, credits, and estate, within the said city of Providence. And your orator further showeth, that he has obtained administration on the estate of the said Willard W. to be granted by and out of the municipal court of said city of Providence, and hath given bonds for

the faithful performance of said trust, according to law, and hath thereby become, and now is, his legal personal representative. And your orator further showeth, that the suit and proceedings aforesaid having become abated by the death of the said Willard W. Wetmore, your orator is, as he is advised, as the personal representative of the said Willard W. entitled to have the said suit and proceedings revived against the said defendants; and the said accounts by the aforesaid order, directed, prosecuted, and carried on, and to have the said cause put in the same state and condition as the same was in previous to the death of the said Willard W.

To the end, therefore, that the said defendants may answer the premises, and that the said suit and proceedings which so became abated as aforesaid, may stand revived, and be in the same plight and condition as the same were in at the time of the death of said Willard W., or that the said defendants may show good cause to the contrary.

May it please your honors to grant to your orator the writ of subpœna ad revivendum, to be directed to the said Henry Mathewson, Cyrus Butler, Edward Carrington and Samuel Wetmore, commanding them respectively to be and appear before this hon. court on a certain day therein to be named, and under a certain penalty therein to be named, then and there to shew cause, if cause there be, why said suit and proceedings so abated as aforesaid, should not be revived, and in the same plight, state and condition as the same were in at the time of the abatement thereof, and that your orator may be further relieved in the premises, as to your honors may seem meet, and his case may require.

By R. W. GREENE, Sol. for Orator.

Subpœna.

Rhode Island District, sc.

[SEAL.] The President of the United States, to Henry Mathewson, master mariner, Edward Carrington, Samuel Wetmore and Cyrus Butler, merchants, all of the city of Providence, and citizens of the State of Rhode Island and Providence Plantations, greeting:

For certain causes offered to our circuit court for the first circuit, within and for the Rhode Island district, in chancery, you are hereby commanded and strictly enjoined, and each of you, laying aside all other matters and things, notwithstanding any other excuse, personally to appear at the clerk's office of said court, Monday the 7th day of July next, being the rule day of said court, and then and there upon your corporal oaths, full, true and perfect answers make to the bill of revivor of John H. Clarke of the city of Providence, administrator of the estate of Willard W. Wetmore, deceased, as of record will more fully appear. Hereof fail not under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district is hereby commanded to make service of this writ by reading the same to said Henry, Edward, Samuel and Cyrus, or by leaving a true and an attested copy thereof at their several and last place or places of abode fourteen days at least before said rule day. And hereof make your return on or before said rule day. Hereof fail not.

Witness the hon. John Marshall, our chief justice, this 13th day of June, A. D. 1834.

BENJA. COWELL, Cl'k.

Return.

U. S. OF AMERICA,
Rhode Island District, sc.

June 13th, 1834. Made service of this writ by reading the within in the presence and hearing of the within named, except Samuel Wetmore, who is not by me to be found, Henry Mathewson, Cyrus Butler, Edward Carrington, as within commanded.

B. ANTHONY, Marshal.

4 services	$8,00
1 copy	50
2 m.	20
	$8 70

Appearance and Motion of Henry Mathewson.

Circuit court of the United States in and for Rhode Island district, sitting in chancery.

In the case of JOHN H. CLARKE, administrator on the estate of Willard W. Wetmore, deceased, complainant, in a bill of revivor,
vs.
HENRY MATHEWSON and others, defendants.

The said Henry Mathewson, on this seventh day of July, A.D. 1834, being rule day of said court, in his own proper person appears at the office of the clerk of said court, but does not submit himself to the jurisdiction of said court, nor make any answer to said bill, because he says that it appears by said bill, and so the fact is, that the said John H. Clarke, the complainant, and he the said Henry Mathewson, one of the defendants, are both citizens of the State of Rhode Island and Providence Plantations, and are not citizens of different States.

Wherefore he prays this honorable court to take no further cognizance of the same bill.

HENRY MATHEWSON.

Decree.

Rhode Island District, sc.

Circuit Court, Nov. term, A. D. 1835.

In the cause in Equity,

JOHN H. CLARKE, administrator, &c., complainants, in a bill of revivor,
vs.
HENRY MATHEWSON and others, defendants.

On motion of the said Henry Mathewson, and it appearing by the said bill of revivor, that the said John H. Clarke, the complainant, and the said Henry Mathewson, one of the defendants, are both citizens of the State of Rhode Island and Providence Plantations, and not citizens of different States: it is hereby ordered, adjudged and decreed, that the said bill of revivor be and the same is hereby dismissed for want of jurisdiction.

Entered of record by order of court, November term, A. D. 1835.

JOHN T. PITMAN, Cl'k.

Petition for Appeal.

CIRCUIT COURT OF UNITED STATES,
District of R. I. ss.

Clerk's Office. Rule Day, Sept. 5th, A. D. 1836.

In the Bill of Revivor.

JOHN H. CLARKE, Adminstrator on the estate of Willard W. Wetmore, deceased, plaintiff, against HENRY MATHEWSON, CYRUS BUTLER and others, defendants.

The said John H. Clarke, plaintiff in the above case, appeals to the Supreme Court of the United States from a decree of the honorable circuit court, rendered at the November term thereof, A. D. 1835, dismissing said bill, and prays that such proceedings may be had in the premises as the law requires.

By R. W. GREENE, his Solicitor.

September 5th, 1836. Let a citation issue to the said defendants, requiring them to show cause at the next rule day why the within appeal should not be allowed, &c.

JOHN PITMAN,
District Judge U. S. for Rhode Island District.

Citation.

RHODE ISLAND DISTRICT, *sc.*

To Henry Mathewson, master mariner, Edward Carrington, Samuel Wetmore, and Cyrus Butler, merchants, all of the city of Providence and citizens of the State of Rhode Island and Providence Plantations, greeting: [SEAL.]

Whereas at the rule day of a circuit court holden at Providence, within and for the Rhode Island district, on the fifth day of September, A. D. 1836, John H. Clarke, administrator on the estate of Willard W. Wetmore, deceased, in a cause in equity wherein said John H. Clarke was plaintiff, and you were defendants, presented a petition wherein he appeals to the Supreme Court of the United States from a decree of said circuit court, rendered at the November term thereof, A. D. 1835, and prays that such proceedings may be had in the premises as the law requires.

Wherefore you are hereby required to appear at the clerk's office of said circuit court, on Monday, the third day of October next, being the rule day of said court, if you see fit, to show cause, if any you have, why said appeal should not be allowed.

Dated at Providence, the thirteenth day of September, A. D. 1836.

JOHN T. PITMAN, Clerk.

I have notified all the within named except Samuel Wetmore, whom I notified by copy to appear at the within time and place, by reading the within.

B. ANTHONY, Marshal.

Fees 4 services,	$8 00.
1 copy,	50.
travel,	7 00.
	$15 50.

Rule day, October 3d, 1836. No cause appearing to the cnotrary, the within appeal is hereby allowed upon a bond being given to prosecute the said appeal, &c. in the sum of two hundred dollars, with surety satisfactory to the district judge, within ten days from the present time.

JOHN PITMAN,
District Judge U. S. for Rhode Island Dist.

Appeal Bond.

JOHN H. CLARKE, Adm'r,
vs.
HENRY MATHEWSON et al. } Case.

U. S. CIRCUIT COURT,
Rhode Island District.

Know all men by these presents, that we, John H. Clarke, of Providence, in the county of Providence and State of Rhode Island, as principal, and William Butler, of said Providence, as surety, are held and firmly bound unto Henry Mathewson, Cyrus Butler, Samuel Wetmore, and Edward Carrington, in the sum of two hundred dollars, to be paid to the said Henry Mathewson, Cyrus Butler, Samuel Wetmore, and Edward Carrington, their exectors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally firmly by these presents.

The condition of the above obligation is as follows:

Whereas at the November term of the circuit court of the United States, for the first circuit, begun and holden at Providence within and for the Rhode Island district, on the fifteenth day of November, A. D. 1835, a decree was rendered and pronounced by said court on a bill of revivor, in which bill the said John H. Clarke, adm'r on the estate of Willard W. Wetmore, deceased, was plaintiff, and the said Henry Mathewson, Cyrus Butler, Samuel Wetmore, and Edward Carrington ware defendants; from which decree the said John H. Clarke has appealed to the Supreme Court of the United States, next to be holden at the city of Washington, on the second Monday in January next. Now, therefore, if the said Clarke shall prosecute his said appeal before said Supreme Court with effect, or in default thereof, shall well and truly pay all such costs as shall be adjudged for him to pay by said Supreme Court, or by said circuit court by reason of said appeal, then the beforewritten obligation shall be void and of no effect; otherwise it shall remain in full force and effect.

Sealed with our seals, and dated this eighth day of October, A. D. one thousand eight hundred and thirty-six.

JOHN H. CLARKE, [SEAL.]
WM. BUTLER, [SEAL.]

Signed, sealed, and delivered in presence of
JOHN T. PITMAN.

RHODE ISLAND DISTRICT, *sc.*

The President of the United States of America, to the Marshal of said District, or to his Deputy, greeting:

You are hereby required to make known to Henry Mathewson, master mariner, Edward Carrington, Samuel Wetmore, and Cyrus Butler, mer-

chants, all of the city of Providence, and citizens of the State of Rhode Island and Providence Plantations, that in a certain cause in equity in the circuit court of the United States, within and for the Rhode Island District, wherein they were defendants, and John H. Clarke, of the city of Providence, administrator of the estate of Willard W. Wetmore, deceased, in said Rhode Island district, and a citizen of the State of Rhode Island and Providence Plantations, is plaintiff. The said plaintiff hath appealed from a decree against him of the said circuit court, rendered in said cause at the November term thereof, 1835, holden in Providence in and for the said district of Rhode Island, on the 16th day of November, A. D. 1835, unto the Supreme Court of the United States next to be holden at Washington, within and for the said United States, on the 2d Monday of January, A. D 1837, which appeal has been duly allowed. And that they the said Henry Mathewson, Edward Carrington, Samuel Wetmore, and Cyrus Butler, then and there be before the said Supreme Court to hear the proceedings on the said appeal if it shall seem expedient unto them, and further to do and receive what in the Supreme Court shall be ordered, adjudged and decreed in this behalf. And make due return of this citation with your doings thereon.

In witness whereof I have caused the seal of the said circuit court to be hereunto affixed, and have subscribed these presents this 19th day of December, A. D. 1836.

J. PITMAN,

[L. S.] District Judge U. S. for Rhode Island District,
And one of the Judges of the said Circuit Court.

UNITED STATES OF AMERICA,
Rhode Island District, sc.

December 19th, A. D. 1836. Made service of this precept by reading the within in the presence and hearing of the within named Henry Mathewson, Edward Carrington, and Cyrus Butler, and on the same day served Samuel Wetmore with a true and attested copy hereof.

BARRINGTON ANTHONY,
U. S. Marshal R. I. District.

Fees,	$ 8 00.
Travel,	7 00.
	$15 00.

RHODE ISLAND DISTRICT, *sc.*

Clerk's Office of the Circuit Court of the United States,
In Providence, January 3d, 1837.

I, John T. Pitman, clerk of said court, do hereby certify that the preceding sixty-six pages contain a true transcript of the record of the case of John H. Clarke, adm'r, against Henry Mathewson et al. now on file in this office, duly compared by me. Also, that I have hereto attached the original citation directed to said Henry Mathewson and others, to appear if they see fit, at the Supreme Court of the United States, on the second Monday of January inst.

In testimony whereof I have hereto set my hand and affixed the seal of said court, the day and year aforesaid.

[L. S.] JOHN T. PITMAN, Clk.